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THE

MISCELLANEOUS DOCUMENTS

OF THE

HOUSE OF REPRESENTATIVES

FOR THE

SECOND SESSION OF THE FORTY-EIGHTH CONGRESS.

1884-'85.

IN SEVENTEEN VOLUMES.

Volume 3.—No. 15.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1885.

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48TH CONGRESS, 2d Session. | HOUSE OF REPRESENTATIVES. | MIS. DOC. No. 15.

DIGEST

OF

THE OFFICIAL OPINIONS

OF THE

ATTORNEYS-GENERAL OF THE UNITED STATES,

COMPRISING

ALL OF THE PUBLISHED OPINIONS CONTAINED IN VOLUMES I. TO XVI. INCLUSIVE, AND EMBRACING THE PERIOD FROM 1789 TO 1881.

PREPARED BY

A. J. BENTLEY, ESQ.

[PUBLISHED BY AUTHORITY OF CONGRESS.]

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1885.

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TOGETHER WITH THEIR PRINCIPAL SUBDIVISIONS.

NOTE.—The titles printed in *italics* contain cross-references only.

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A LIST

Of the Attorneys-General of the United States who were appointed and served within the period embraced by this Digest, viz, from the year 1789 to the year 1881, arranged in chronological order according to their terms of service respectively.

1789–1794, Hon. Edmund Randolph, of Virginia.
1794–1795, Hon. William Bradford, of Pennsylvania.
1795–1801, Hon. Charles Lee, of Virginia.
1801–1805, Hon. Levi Lincoln, of Massachusetts.
1805, Hon. Robert Smith, of Maryland.
1805–1807, Hon. John Breckinridge, of Kentucky.
1807–1811, Hon. Cæsar A. Rodney, of Delaware.
1811–1814, Hon. William Pinkney, of Maryland.
1814–1817, Hon. Richard Rush, of Pennsylvania.
1817–1829, Hon. William Wirt, of Virginia.
1829–1831, Hon. John M. Berrien, of Georgia.
1831–1833, Hon. Roger B. Taney, of Maryland.
1833–1838, Hon. Benjamin F. Butler, of New York.
1838–1840, Hon. Felix Grundy, of Tennessee.
1840–1841, Hon. Henry D. Gilpin, of Pennsylvania.
1841, Hon. John J. Crittenden, of Kentucky (see seventh line below).
1841–1843, Hon. Hugh S. Legaré, of South Carolina.
1843–1845, Hon. John Nelson, of Maryland.
1845–1846, Hon. John Y. Mason, of Virginia.
1846–1848, Hon. Nathan Clifford, of Maine.
1848–1849, Hon. Isaac Toucey, of Connecticut.
1849–1850, Hon. Reverdy Johnson, of Maryland.
1850–1853, Hon. John J. Crittenden, of Kentucky.
1853–1857, Hon. Caleb Cushing, of Massachusetts.
1857–1860, Hon. Jeremiah S. Black, of Pennsylvania.
1860–1861, Hon. Edwin M. Stanton, of Ohio.
1861–1864, Hon. Edward Bates, of Missouri.
1864–1866, Hon. James Speed, of Kentucky.
1866–1868, Hon. Henry Stanbery, of Ohio.
1868, Hon. O. H. Browning, of Illinois (*ad interim*).
1868–1869, Hon. William M. Evarts, of New York.
1869–1870, Hon. Ebenezer Rockwood Hoar, of Massachusetts.
1870–1872, Hon. Amos T. Akerman, of Georgia.
1872–1875, Hon George H. Williams, of Oregon.
1875–1876, Hon. Edwards Pierrepont, of New York.
1876–1877, Hon. Alphonso Taft, of Ohio.
1877–1881, Hon. Charles Devens, of Massachusetts.

DIGEST OF OPINIONS

OF THE

ATTORNEYS-GENERAL OF THE UNITED STATES.

ACCOUNTS.

See also ACCOUNTING OFFICERS; CLAIMS.

I. *Generally.*
II. *Rendition.*
III. *Adjustment.*
IV. *Reopening.*
V. *Property Accounts (Army).*

I. Generally.

1. The accounts of Army contractors should be settled by the accounting officers. If they have any doubts on questions of law, arising in the course of the settlement, they will state them to the head of the Department, who, if he please, may call for the opinion of the Attorney-General. *Opinion of July 27, 1824, 1 Op. 678.*

2. The interference of the President in any form with the settlement would be illegal. He has no official connection with the settlement of such accounts; and so far from being called upon to interpose any directions to the accounting officers, it would be an unauthorized assumption of authority for him to interfere at all. *Ibid.*

3. The late commissioners to hold treaties with the Chickasaw and Choctaw Indians are not bound to account to the Government for the depreciation of the money deposited by them in bank to the credit of the Treasurer of the United States. *Opinion of June 8, 1830, 2 Op. 346.*

4. The act of August 2, 1861, chap. 37, does not transfer the settlement of the accounts of district attorneys and marshals to the Attorney-General's Office. *Opinion of Aug. 10, 1861, 10 Op. 95.*

5. Duties of the accounting officers of the Treasury as to the auditing of the accounts of the State of Indiana, under the provisions of the act of March 29, 1867, chap. 14, to reimburse that State for moneys expended in enrolling and equipping troops to aid in suppressing the rebellion, defined. *Opinion of Feb. 19, 1870, 13 Op. 218.*

II. Rendition.

6. The clerk of the circuit court of the District of Columbia, who is also clerk of the criminal court of the District, is bound to account to the Treasury for the fees which he receives in the latter capacity. *Opinion of March 2, 1854, 6 Op. 388.*

7. The clerks of the district courts of the United States in California are bound to render to the Treasury an emolument account equally with clerks of other districts. *Opinion of May 1, 1854, 6 Op. 433.*

8. The provision in section 3622, Rev. Stat., giving the Secretary of the Treasury power, when, in his opinion, the circumstances of the case justify and require it, to extend the time prescribed for the rendition of accounts, does not authorize him to institute a new system of rendering accounts—*e. g.*, by permitting disbursing officers to render their accounts bi-

monthly, quarterly, or at longer intervals, instead of monthly, as now required. *Opinion of Dec.* 2, 1878, 16 Op. 222.

9. That provision is intended only to enable the Secretary of the Treasury to deal with particular cases wherein accidental circumstances make it proper to give more time for the rendition of the accounts, by way of exception to the general rule. *Ibid.*

III. Adjustment.

10. The first section of the act of March 2, 1833, chap. 123, for the relief of Colonel Carter, assumes that the item of $1,860 has been paid, and provides for the immediate payment of a gross sum in addition to the amount before received, without authorizing the accounting officers to open the former account or to readjust it. It is, therefore, a provision by itself, and should be so considered in reference to other matters provided for in said act. *Opinion of April* 23, 1834, 2 Op. 640.

11. The second section provides for the settlement of various other accounts—*i. e.*, those accounts only which, on the 2d March, 1833, were unadjusted and unsettled between him and the Government. In settling these accounts the accounting officers may proceed and settle any one or more of the separate accounts referred to in the papers, for the claimant is entitled to such a settlement. *Ibid.*

12. How far it may be proper to make partial settlements of either of the separate accounts is a question of convenience and discretion; but it occurs to the Attorney-General that what may be required by justice and equity in respect to the accounts under each contract cannot very well be ascertained without a view of all the claims which it is intended to present under it. *Ibid.*

13. But in adjusting the unsettled claims and accounts presented under the act in question, the accounting officers have no authority to reopen the former settlements, nor to require the production of evidence to establish their correctness, nor to set off errors prejudicial to the Government which may be detected therein against the allowances to which Colonel Carter may now show himself to be entitled in the unsettled accounts. *Ibid.*

14. On a reconsideration of the opinion given in Carter's case (2 Op. 640), *held* that the accounting officers may continue the former accounts by charging to the debit of Carter all such sums as they may find to have been erroneously credited to him in either of the former accounts, and all items of this nature will pass to his debit in the general account between him and the Government. *Opinion of May* 3, 1834, 2 Op., 650.

15. The several sums which may be allowed under the act for his relief should be credited in the above-mentioned general account, and the balance, either for or against him, should be certified in the usual manner. *Ibid.*

16. The accounts of marshals, certified by the court, or one of the judges thereof, as provided in the fourth section of the act of May 8, 1792, chap. 36, are conclusive upon the accounting officers of the Treasury, except in cases where charges shall be allowed by the court or judge for a service or purpose not mentioned in the acts of Congress, and where a greater sum shall be allowed than that fixed by law. *Opinion of March* 20, 1838, 3 Op. 316.

17. As to whether a charge of $2 for serving a writ of subpœna is proper, it is not perceived that there is any legal warrant for excepting it from the enacting words of the statute giving that compensation for the service of any process, &c. *Ibid.*

18. The account of the marshal of the District of Columbia for extra allowances to Government witnesses on the trial for the burning of the Treasury buildings, made by the circuit court, and certified, cannot be legally paid, notwithstanding the certificate, for the reason that no act of Congress authorizes payment of charges for such a purpose. [The distinction between this and the preceding case is, that here the service is not, whilst there it was, authorized by law. The two opinions read together clearly define the views of the Attorney-General upon the subject of the efficacy and legal bearing of the certificate of the court upon the accounts of marshals.] *Opinion of March* 20, 1838, 3 Op. 318.

19. The accounting officers may allow an account, if it be a just one, of C. J. I., district attorney of the eastern district of Pennsylvania, notwithstanding his having been sued by the United States for various bonds placed in his hands for collection, for moneys received thereon, and for other moneys (his account not having been set off in the suit), and a judg-

ment recovered by the United States against him for $3,975.78, the same as if it were presented prior to the institution of that suit, as the said account was a matter separate and distinct from the subject-matter of the suit, and a set-off not having been required to be made. *Opinion of Aug.* 6, 1838, 3 Op. 345.

20. Where the acceptance of a Postmaster-General had been given in payment of an account for work done, and the amount thereof had been recharged by a subsequent Postmaster-General, *held* that the amount of the acceptance ought not to be deducted from an account current for other work. *Opinion of March* 2, 1841, 3 Op. 624.

21. The sixth section of the act of September 22, 1789, chap. 17, and also the third section of the act of January 22, 1818, chap. 5, provide that the compensation which shall be due to the members and officers of the Senate shall be certified by the President thereof, and the same shall be passed as public accounts and paid out of the Treasury; and the certificate of such President, which is the presumed act of the Senate *pro hac vice*, is conclusive upon the matter as between that body and the accounting officers. *Opinion of Oct.* 18, 1841, 3 Op. 662.

22. The certificate of the presiding officer of the Senate is conclusive evidence in support of charges for certain payments of mileage made by the Secretary to Senators for attending a special session. *Opinion of Nov.* 27, 1849, 5 Op. 191.

23. Under the first section of the act of January 22, 1818, chap. 5, the Secretary of the Senate is entitled to credit for such payments, whether the certificate of the presiding officer be conclusive or not. *Ibid.*

24. Where a receiver of public moneys, received from sales of public lands, made default after November, 1841, and it was made to appear that a former commission to that office expired on the 13th September in that year, that the bond given for the performance of duties under the former commission was dated in March, and that given for performance of duties under the latter was dated in November, *held* that in stating the account an amount of the public moneys, certified to have been in his hands in November, 1841, sufficient to pay for all the lands sold up to the 13th of September, 1841, should be credited to him in the discharge of the first bond, and the deficit found charged to the account of said receiver and his sureties in the second bond. *Opinion of July* 2, 1851, 5 Op. 396.

25. A statute of private relief enacted that a certain account in the Post-Office Department, which had been rejected by the Sixth Auditor and on which appeal had been taken to the First Comptroller, should be finally adjusted by the Second Comptroller and the Commissioner of Customs, and, in case of their disagreement, by the Attorney-General. *Held* that the effect of this provision is to substitute another person or persons, *pro hac vice*, to perform one of the statute duties of the First Comptroller. *Opinion of June* 25, 1856, 7 Op. 724.

26. This may be lawfully done, in so far as respects the Second Comptroller and the Commissioner of Customs, who will thus in effect control an auditing of the Sixth Auditor, and certify the same to the Postmaster-General. But the Attorney-General cannot lawfully be required to act as the substitute of the First Comptroller; and, so far as regards him, the only effect is to require him to advise the Second Comptroller and the Commissioner of Customs on matters of law arising in the case. *Ibid.*

27. All accounts of the post-offices, in common with other public accounts, are to be adjusted quarterly, with such vouchers as the Postmaster-General may prescribe. *Opinion of Oct.* 26, 1856, 8 Op. 125.

28. Under section 3 of the act of May 4, 1858, chap. 25, for the relief of the Clerk of the House of Representatives, that officer is entitled to credit only for those extra allowances that were both authorized by the House and approved by the Committee of Accounts. *Opinion of June* 21, 1858, 9 Op. 172.

29. Where the accounts of a mail contractor have been fully settled, and no attempt has been made to disturb them for many years, they are conclusive, and no charge can now be made against him which ought to have been settled then. *Opinion of July* 21, 1858, 9 Op. 198.

30. An act of Congress granting money to one mail contractor, or ordering the same amount to be charged upon the account of another, whose accounts have been long since settled, is void and of no effect as against the latter. *Ibid.*

act of March 3, 1845, chap. 71, the doctrine has been repeatedly and distinctly asserted by the Attorney-General, and has received judicial sanction, that a settlement of an account by the accounting officers, in pursuance of special statutory authority, which purports to be final, and which, having passed from their hands, has been consummated by payment, cannot afterwards be opened and readjusted by them. The previous opinion in case of Anson Dart (10 Op. 231) reaffirmed. *Ibid.*

56. Where an account has been duly adjusted, settled, and closed by the proper officers, upon a full knowledge of all the facts, and no errors in calculation have been made, it cannot be reopened without express authority of law. *Opinion of April* 20, 1868, 12 Op. 386.

V. Property Accounts (Army).

57. The laws, regulations, and departmental practice concerning the settlement of war accounts generally, but more especially of *property* accounts relating to the Army, from the commencement of the Government down to the present time, reviewed. *Opinion of Aug.* 4, 1871, 13 Op. 483.

58. Under the law as it stood before the passage of the act of March 3, 1817, chap. 45, the settlement of property accounts arising in the military service belonged to an officer in the War Department, called the superintendent-general of military supplies, who discharged this duty under the direction of the Secretary of War. *Ibid.*

59. The office of superintendent-general of military supplies was abolished by that act, and, as it seems from the last clause of the sixteenth section thereof, the legislature contemplated that the duties of that officer touching the settlement of property accounts should thereafter be performed by such of the accounting officers of the Treasury, then created, upon whom was devolved the adjustment of accounts pertaining to the military service. *Ibid.*

60. The subsequent course of departmental regulations and practice has in general coincided with that understanding of the statute, and, moreover, the duty and authority of the accounting officers of the Treasury to settle property accounts relating to the Army have been presupposed and distinctly recognized by subsequent legislation. *Ibid.*

61. Thus the practice of referring such accounts to those officers for settlement is not founded merely upon departmental usage or departmental regulation, but rests upon direct legislative enactment; and they are to be regarded as authorized *by law* to settle such accounts until Congress shall otherwise provide. *Ibid.*

62. But the act of 1817 left this duty to be discharged by those officers as it was previously discharged by the superintendent-general of military supplies, that is to say, under the direction of the Secretary of War; and no alteration of the law in that respect has been made by any subsequent statute. *Ibid.*

63. It follows that the property accounts of quartermasters in the Army should be transmitted from the War Department to the proper accounting officers of the Treasury for settlement—such settlement to be made by them, however, under the direction of the Secretary of War. *Ibid.*

ACCOUNTING OFFICERS.

I. *Generally.*
II. *Powers and Duties.*
III. *Effect of Settlement by.*
IV. *Appeal from.*

I. Generally.

1. A public debtor proposes to discharge himself of an aggregate sum of upwards of $7,000 by his own oath alone, without any detail of particulars: *Held* that no principle of common law or equity would justify the accounting officers in allowing charges on such evidence. *Opinion of March* 20, 1823, 1 Op. 601, 602.

2. It is inexpedient for accounting officers in any case, unless thereunto specially directed by act of Congress, to readjudicate upon the items of an account once considered and settled in their offices. If the practice be allowed, the experiment will be made upon every change of accounting officers, by persevering claimants who may imagine themselves entitled to more than they have been allowed, to procure a reconsideration and revision of former decisions; and the same would be likely to result disadvantageously to the Government. *Opinion of April* 24, 1839, 3 Op. 461.

3. The Comptroller and Auditors of the Treasury, whose appointments were authorized by the third section of the act of 3d March, 1817, chap. 45, are officers in the Treasury Department previously established by law, and are embraced in the restrictions imposed upon certain public officers by the eighth section of the act of September 2, 1789, chap. 12. The object of the law was to withdraw from the accounting officers every motive of private interest in the performance of their public duties. *Opinion of March* 15, 1847, 4 Op. 555.

4. Acts of Congress granting relief in special cases, and referring claims to the Second Auditor, confer upon him a jurisdiction exclusive of any other Department; and where one Auditor settles such accounts, his successors are bound by his decisions. *Opinion of May* 8, 1849, 5 Op. 97.

5. The heads of Departments have a rightful authority to direct allowances to be made, or to reject claims for allowances, in settling and adjusting accounts relating to the business of their respective Departments; and such directions and rejections ought to be conformed to by the Auditors and Comptrollers and Commissioner of Customs, respectively. *Opinion of Nov.* 13, 1852, 5 Op. 630, 656.

6. The Secretary of the Treasury is not bound to grant warrants for issuing money from the Treasury for whatever balances the Auditors and Comptrollers and Commissioner of Customs may state and certify; but, as the head of the accounting officers of the Treasury Department, as the Secretary of the Treasury and the head of the Department, he has the rightful authority to cause accounts to be reformed, readjusted, and settled according to his judgment of the right and justice of the case. *Ibid.*

7. The duty to countersign warrants does not include the power to supervise, reverse, or frustrate the decision of the Secretary, nor authorize a refusal to countersign because the Comptroller or the Commissioner of Customs differs in opinion from the Secretary as to the sum proper to be allowed, or is of opinion that the warrant ought not to issue for any sum. *Ibid* 657.

8. The Auditor of the Treasury for the Post-Office Department has direct official relation to both the Treasury and Post-Office Departments. *Opinion of Aug.* 25, 1855, 7 Op. 439.

9. If an accounting officer refuse to comply with the lawful instructions of the head of the proper Department in respect to the settlement of an account, the appropriate ultimate remedy is his removal. *Opinion of Oct.* 8, 1864, 11 Op. 109.

10. The regulations of the Navy concerning payments to administrators of balances due deceased seamen and marines, payments of arrearages claimed under wills, &c., are not applicable to or binding upon the accounting officers of the Treasury Department in the settlement of naval acounts. They extend to and govern only those persons who are in the naval service. *Opinion of May* 21, 1880, 16 Op. 494.

II. Powers and Duties.

11. The accounting officers may adopt the report of a committee of Congress upon which a given law was reported and passed for the principles which are to govern in the settlement of accounts under the law. The passage of a bill accompanying a written report may be considered the adoption of that report. *Opinion of March* 7, 1823, 1 Op. 597.

12. The accounts and claims of Daniel D. Tompkins are, under the act of February 21, 1823, chap. 12, to be settled on principles of equity and good conscience, subject to the revision and final decision of the President. *Ibid.*

13. The accounting officers in adjusting such accounts may receive depositions, taken on notice, as proof of the items thereof. *Ibid.*

14. Such officers must act upon the accounts in the first instance. They must pass upon them so that there shall be decisions to be approved or disapproved by the President, whose power is only appellate in its nature. *Ibid.*

15. Accounting officers may re-examine any case where judgment has been rendered by a court and jury before the passage of the act of 1st March, 1823, chap. 37, if the defendant against whom the judgment has been rendered has any solid ground on which to ask a court of law for a new trial. *Opinion of March* 20, 1823, 1 Op. 598.

16. Where it shall appear to an accounting officer that there is newly discovered legal evidence of which the defendant was wholly and innocently ignorant at the time of the trial, and which if he had had the benefit of it would

have produced a different result, he may open the matter and give the party the benefit of it. But accounting officers are to re-examine and admit no claims under said act where suits have been commenced unless where new evidence is adduced other than that of the party interested. *Ibid.*

17. It is not incumbent on the Second Comptroller to pass the amount of the claim of a purser in the Navy to his credit, unless the same has been settled by the Fourth Auditor and the balance certified by that officer for his decision. *Opinion of June* 19, 1830, 2 Op. 352.

18. The Second Comptroller of the Treasury is authorized by law, in every case where, in his opinion, further delays will be injurious to the United States, to direct the Auditors, whose duties are to pass upon accounts confided to his revision, to audit and report the same to him, that he may revise and finally decide thereon. *Opinion of March* 26, 1834, 2 Op. 625.

19. The accounting officers may make rests and settlements in accounts which are not final settlements, and which may be reviewed and corrected whenever errors or false items are found therein; not, however, by reopening or restating previous adjustments, but by making such new entries as shall produce the proper correction. *Ibid.*

20. Even after accounts are finally closed, so far as the Auditors are concerned, there may be cases in which the Comptroller or head of the Department may be authorized to interfere for the purpose of correcting errors or frauds which may have been discovered after the action of the Auditor. And still further, although the matter may have passed beyond the reach of all the executive officers, the Government may yet be entitled to surcharge and falsify by an appeal to the appropriate remedies furnished by the judicial tribunals. But accounts of claimants presented for settlement in the *ordinary* course and under the *general* laws, and long since examined and finally settled, cannot be reopened and further evidence received in respect to them. *Ibid.*

21. Where accounts are presented for settlement under special acts of Congress, the powers and duties of the accounting officers must principally depend on the terms of the acts themselves, and be varied according to the variations of the special acts from the general law. *Ibid.*

22. The accounting officers have authority to reconsider a matter that had passed from the executive department to the legislative, under and pursuant to section 2 of the act of March 3, 1841, chap. 37. *Opinion of Dec.* 8, 1841, 3 Op. 731.

23. They are directed to settle and adjust the accounts of the claimants under a contract alleged to have been made on the 12th of June, 1838, for subsisting and emigrating the Cherokee Indians, upon principles of equity and justice; but in settling them the contract of the claimants with the United States of the 27th of June, 1838, must be taken into consideration. *Ibid.*

24. There are no obligations resting upon the Government to indemnify claimants for an amount of provisions beyond what might be necessary for furnishing six thousand Indians during the probable period of their journey. *Ibid.*

25. The contractors are entitled, in strict law, to the difference between the contract price of the provisions they were bound to furnish and the actual value or market price of them in the country where they were to be supplied; but, by the act of 3d March, 1841, chap. 37, the accounting officers are bound to call for proof that the provisions were actually procured to be furnished, and loss on them actually sustained, before making any allowance whatever. *Ibid.*

26. The act of March 3, 1841, chap. 37, which is a positive enactment specially applicable to the case, so far alters the common rule upon the subject of damages for breach of an executory contract as to supersede that rule, and must govern the Department. *Ibid.*

27. By the twenty-fifth section of the act of August 26, 1842, chap. 202, no allowance can be made by the accounting officers of the Government for any commission or inquiry, except military or naval, until special appropriations are made by Congress for the purpose. *Opinion of Oct.* 25, 1842, 4 Op. 106.

28. The accounting officers have no authority to adjust the claims of contractors with the Government for damages without the special authority of Congress. *Opinion of May* 29, 1844, 4 Op. 327.

29. The accounting officers cannot allow credits to pursers for public stores destroyed by inevitable accident whilst in their posses-

sion, Congress only being competent to grant relief in such cases. *Opinion of Feb.* 11, 1845, 4 Op. 355.

30. The accounting officers of the Treasury are not authorized to allow a claim for unliquidated damages alleged to have been sustained by a contractor for emigrating Indians in consequence of the interference of and performance by the officers of the Government of a part of the services. *Opinion of Sept.* 30, 1847, 4 Op. 627.

31. If the contractors in this case have any equitable claim upon the Government for damages, they can be awarded only pursuant to a future act of Congress. *Ibid.*

32. Where the Secretary of War has decided that certain officers have a command according to their brevet rank, it is the duty of the accounting officers of the Treasury to respect his decision. *Opinion of June* 26, 1851, 5 Op. 386.

33. The existence of a command according to brevet rank is to be presumed from the decision or order of the Secretary of War respecting them, and to be regarded by the Auditor and Comptroller as established by and according to his decision and orders. *Ibid.*

34. Acts done within the peculiar and legitimate sphere of the Secretary's official duty are to be taken and understood as rightly done, and to preclude all collateral inquiry by accounting officers. *Ibid.*

35. In case a contract for services be rescinded by the United States, without malfeasance of the other party, and after the services have been partly performed by him, if he claim unliquidated damages as for breach of contract the case is beyond the powers of the accounting officers of the Treasury; but if he waive all other claims and elect to take payment as for part performance in discharge of the contract, it is a mere question of account to be passed by the proper Auditor and Comptroller. *Opinion of June* 1, 1854, 6 Op. 496.

36. The Comptrollers and Auditors of the Treasury have no general authority to award damages as for tort, on contract broken; their jurisdiction is confined to matters of account arising *ex contractu* or by operation of law. *Opinion of June* 7, 1854, 6 Op. 516.

37. It is the general duty of the accounting officers of the Treasury, by standing laws, to deal with accounts only; in doing which they are subject to the supervision of some proper head of Department. *Opinion of Jan.* 6, 1857, 8 Op. 293.

38. When by special law, or in reference to any special matter, the authority of the accounting officers of the Treasury is extended beyond the question of accounts to one of unliquidated damages, such officers are not thereby converted into independent courts of law, but still remain executive or administrative officers of a Department. *Ibid.*

39. An accounting officer has undoubted power to disallow a fee charged by a person who is not an officer and who had no right to perform the services for which he seeks to be paid. *Opinion of Feb.* 11, 1859, 9 Op. 268.

40. A settlement was made by the accounting officers of the Treasury with F., as assignee of certain parties, for the use and occupation of some buildings by the military authorities, whereupon he was paid the amount allowed. Subsequently another settlement was made with him, as assignee of certain other parties, for the use and occupation of other buildings by the same authorities, wherein, it having in the mean time been ascertained that the allowance on the first settlement was improper, and made in ignorance of a fact which, had the accounting officers been cognizant thereof at the time, would have precluded such allowance, the amount paid as aforesaid was deducted, and only the balance remaining after the deduction allowed: *Held* that, notwithstanding the claims originally belonged to and were derived by assignment from different persons, it was competent to the accounting officers, under the circumstances, to make a deduction in the last settlement of what had been improperly allowed and paid on the first. *Opinion of July* 10, 1874, 14 Op. 412.

41. The authority of the Third Auditor and Second Comptroller to settle claims or accounts of any kind against the United States is derivable solely from legislative enactment. The statutory provisions conferring upon them authority in that regard reviewed; and *held* that the authority so conferred does not extend to the settlement of any claims or accounts for compensation for damages (whether the damages were sustained by the loss of property or otherwise) other than such as are of the classes specifically described in those provisions. *Opinion of Sept.* 9, 1875, 15 Op. 39.

42. It is not the duty of the accounting offi-

cers of the Treasury to require of claimants under the act of March 3, 1849, chap. 129 (section 3483 Rev. Stat.), proof of loyalty. *Opinion of Sept.* 6, 1877, 15 Op. 652.

III. Effect of Settlement by.

43. The settlement of an account by the proper accounting officers is final and conclusive, so far as concerns the executive department of the Government. If the individual whose account has been settled conceives himself injured by such settlement, his recourse must be to the judiciary or to Congress. *Opinion of Oct.* 20, 1823, 1 Op. 624.

44. Where the Third Auditor shall have examined and certified, and transmitted, with vouchers, an account to the Second Comptroller, and the latter officer shall have certified the amount due to the Secretary of War, the matter is final so far as the accounting officers of the Government are concerned, and can only be set aside by the Secretary, acting under the direction of the President. *Opinion of Dec.* 4, 1829, 2 Op. 303.

45. A decision by the Second Comptroller upon a claim properly before him cannot be questioned by any other of the accounting officers. A demand after passing him ceases to be a matter of account, and becomes a liquidated and adjusted demand. *Ibid.*

46. Where the account of General Taylor had been settled by the accounting officers and a balance found against him, for which a suit had been commenced, and a memorial was subsequently presented by him to the President, requesting the discontinuance of the suit on account of alleged errors in the settlement: *Held* that the decision of the Comptroller was conclusive upon the executive branch of the Government, and that the President does not possess the power to enter into the correctness of the account for the purpose of taking any measures to correct the errors which the accounting officers may have committed. *Opinion of April* 5, 1832, 2 Op. 508.

47. Where the question is merely one of computation or amount, the decision of the accounting officers is to be regarded as final. *Opinion of March* 25, 1869, 13 Op. 6.

48. Provisions of the acts of March 3, 1817, chap. 45, and March 30, 1868, chap. 36, relating to this subject considered. *Ibid.*

49. Section 191 of the Revised Statutes is limited to cases where *balances* are found upon the settlement of accounts or claims, and certificates thereof are transmitted to the head of the proper Department for his warrant or requisition; it does not extend to any case where no balance is certified, or where the whole account or claim is disallowed. *Opinion of Feb.* 7, 1877, 15 Op. 192.

50. The prohibition in that section against changing or modifying balances certified by the Commissioner of Customs and the Comptrollers of the Treasury does not apply to these officers. *Ibid.*

51. The provision making their findings "conclusive upon the executive branch of the Government" signifies only that such findings are not to be revisable by any other officer or officers of that branch of the Government. *Ibid.*

52. Whether the Comptrollers and Commissioner are authorized to *reopen* settlements made by themselves or their predecessors in office depends upon considerations founded on the law as it stands independently of the said section; *its* provisions have no bearing on this subject. *Ibid.*

IV. Appeal from.

53. The laws regulating the settlement of the public accounts, under which the Treasury Department is organized, require the Auditors to receive and examine accounts, and to certify them to the Comptrollers, who also examine and pass upon them and certify the balances thereon to the Register, and give no power of appeal to the President, except in particular instances, like that of the accounts of Daniel D. Tompkins, where the power of revision and final decision by the President was expressly conferred by the act. *Opinion of Oct.* 20, 1823, 1 Op. 624.

54. An appeal does not lie to the President from the determination of accounting officers acting in the sphere of their duties; nor can the President interfere with their decisions. *Opinion of Dec.* 18, 1832, 2 Op. 544.

55. The provision of the fourth section of the act of August 16, 1856, chap. 124, declaring that, as to the accounts of marshals, district attorneys, &c., "an appeal shall lie from the decision of the accounting officers to the Secretary of the Interior," was impliedly repealed by the

act of March 30, 1868, chap. 36. *Opinion of Aug.* 91, 1872, 14 Op. 104.

56. Prior to the act of 1856 there was no law authorizing an appeal in such cases to the Secretary of the Interior, and none was enacted subsequent to the act of 1868 down to the act of June 22, 1870, chap. 150, by which only such powers as were then exercised by the Secretary of the Interior over the accounts aforesaid were thereafter to be exercised by the Attorney-General. *Ibid.*

57. No statute has been passed since the last-mentioned act giving an appeal from the accounting officers to the Attorney-General in the cases referred to; and hence, under the existing law, such an appeal does not lie. *Ibid.*

ADMINISTRATIVE PRACTICE.

See also ACCOUNTS, IV; CLAIMS, XXII; RES JUDICATA.

1. It is a rule which each administration has prescribed to itself to consider the acts of its predecessors conclusive, so far as the Executive is concerned. If a decision in a case, made eight years ago, under a former Executive, is open for review and revisal, the same principle will open decisions made during the Presidency of Washington, and keep the acts of the Executive perpetually unsettled and afloat. *Opinion of Oct.* 1, 1825, 2 Op. 8.

2. Where a question has been deliberately settled, and the practice of the Department, under the eye of the Government, during successive sessions of Congress, has conformed to the decision then made, it does not seem proper to disturb such a decision unless a very strong and pressing case should be made for consideration. *Opinion of July* 2, 1829, 2 Op. 220.

3. It having been the usage of the War Department to require of States which were entitled to reimbursements, such as are provided for in the act of 2d June, 1848, chap. 60, to furnish proof of actual expenditure of money, and of the purpose to which it was applied, it is to be presumed that Congress in that act expected such usage to be followed. *Opinion of July* 8, 1852, 5 Op. 563.

4. Adherence to established rules prevents the arbitrary action of the executive branches of the Government, and produces certainty and equality, at least, in their administrations. *Ibid.*

5. Where application was made to the Secretary of the Interior for a review of the action of his predecessor in office and of the Executive in a case passed upon by them during the preceding administration, the application resting solely upon the ground of alleged error in the construction of a statute: *Advised* that the former action in the case cannot with propriety be reviewed. *Opinion of March* 20, 1877, 15 Op. 208.

6. It is a settled rule of administrative practice that the official acts of a previous administration are to be considered by its successor as final, so far as the Executive is concerned. *Ibid.*

ADMINISTRATOR.

See EXECUTORS AND ADMINISTRATORS.

ADVERTISEMENT.

See also CONTRACT, III; PRINTING.

1. The twelfth section of the act of 3d March, 1845, chap. 77, concerning the advertising which the heads of Departments and Bureaus are required to do, does not entitle the National Era, weekly newspaper, to any part of the printing. *Opinion of July* 25, 1849, 5 Op. 145.

2. The clause permitting a third paper to be selected requires that the publications therein shall be made equal to the others as to frequency. *Ibid.*

3. Under section 12 of the act of March 3, 1845, chap. 77, the Postmaster-General is not authorized to order advertisements from his Department to be published in more than three newspapers in the city of Washington. *Opinion of April* 9, 1851, 5 Op. 315.

4. The opinion previously given upon the construction of the act of 3d March, 1845, chap. 77, relative to publications in newspapers by the Executive Departments, is confirmed. *Opinion of July* 13, 1852, 5 Op. 566.

5. *Semble*, if the provisions of law which require certain contracts to be advertised are disregarded, that the contracts, while they remain executory and without commencement of performance, are subject to be rescinded. *Opinion of March* 24, 1854, 6 Op. 406.

6. The provisions of the act of February 26, 1853, chap. 80, regulating the fees of clerks of the courts of the United States and other officers, which provides, among other things, a price for publishing any statute, notice, or order required by law, or by the lawful order of any court, Department, Bureau, or other person, in any newspaper, applies only to such a publication in the case of judicial proceedings, and not to the publication of laws and treaties by the Secretary of State. *Opinion of June* 3, 1854, 6 Op. 502.

7. The act of March 3, 1845, chap. 77, requires the advertising of the Executive Departments to be given to the two newspapers printed in the city of Washington which have the largest permanent subscription, and permits the President to select a third. *Opinion of July* 21, 1857, 9 Op. 54.

8. Where a daily, weekly, and tri-weekly newspaper are printed and published in the same office, by the same person, and under the same name, they are not different papers, but different editions of the same paper. *Ibid.*

9. The advertising should be given to those papers which have the largest permanent subscription to all their issues. *Ibid.*

10. The proprietor of the Constitution newspaper is not entitled to be paid for any executive advertisement printed in his paper after notice of the order of the Secretary of State of January 10, 1860. *Opinion of Jan.* 12, 1860, 9 Op. 2.

11. A resolution of the Senate requesting the Secretary of War to advertise certain hospital notices has not the force of law. But if the request is complied with by the Secretary, the advertisements should be published in accordance with the twelfth section of the act of March 3, 1845, chap. 77. *Opinion of May* 23, 1862, 10 Op. 263.

12. The proprietors of certain newspapers in the District of Columbia are entitled (under section 10 of the act of March 2, 1867, chap. 167, and sections 2 and 4 of the act of July 20, 1868, chap. 176) to payment for the publication, without the previous order of the Postmaster-General, of those notices of mail-lettings which the law *required* him to publish in those papers; but they must show a previous order for the publication of such notices as the Postmaster-General was only *authorized* to publish in those papers before they can claim payment therefor. *Opinion of March* 3, 1869, 12 Op. 559.

13. The proviso in the act of March 3, 1875, chap. 128, making appropriations for the service of the Post-Office Department, was intended to relieve the heads of all the Executive Departments from the requirements of section 3826 of the Revised Statues, respecting the publication of advertisements, notices, and proposals for Virginia, Maryland, and the District of Columbia, as well as to provide specifically respecting the publication of mail-lettings by the Postmaster-General for the States and District above mentioned. *Opinion of May* 6, 1875, 14 Op. 577.

14. It is, accordingly, left discretionary with each head of Department whether he will make the publication referred to in that section in one or more papers of the District of Columbia. *Ibid.*

15. In October, 1875, the Postmaster-General requested the publisher of a newspaper in Alabama to insert therein an advertisement of proposals for carrying the mail in that State, provided he would do it for a sum not exceeding $688.12. The advertisement was duly inserted, and the publisher claims therefor $1,992, the latter amount being agreeably to the rate fixed by the Clerk of the House of Representatives under section 3823 Rev. Stat.: *Held* that section 3941 Rev. Stat., and not section 3823 Rev. Stat., furnishes the law applicable to this case; that under the former of these sections the Postmaster-General had power to select the medium of advertising the proposals and to limit by agreement the compensation therefor; and that the publisher is bound the same as he would be in an ordinary case of compliance with a request conditioned like the above. *Opinion of Jan.* 13, 1876, 15 Op. 527.

16. The joint effect of sections 853 and 3826 Rev. Stat., as regards Government advertisements in newspapers published in the District of Columbia, was to allow the compensation fixed by section 853, unless (under section 3826)

that be more than is paid by private individuals for like services. But section 1 of the act of 1875, chap. 128, repeals section 3826 for every purpose connected with claims for such services. *Opinion of Aug.* 14, 1876, 15 Op. 594.

17. Sections 853 and 854 Rev. Stat. (though modified by a proviso in the act of March 3, 1875, chap. 128, with respect to the advertisement of certain mail-lettings) are still in force, without modification, with respect to advertising of the Treasury Department. Opinion of August 14, 1876 (15 Op. 594), reaffirmed. *Opinion of May* 21, 1877, 15 Op. 282.

18. Section 5 of the act of July 12, 1876, chap. 180, providing for the publication of lists of property in arrears for taxes, does not authorize the Commissioners of the District of Columbia, in determining the "lowest bidder" for making such publication, to have regard to the circulation of each newspaper bidding. It is sufficient if the paper is a *bona fide* newspaper, and there is nothing as to the amount of publicity which the notice may receive that will defeat the purpose of the legislature in requiring the advertisement. *Opinion of June* 27, 1877, 15 Op. 324.

19. The advertisement of the list of property in arrears for taxes, under section 5 of the act of July 12, 1876, chap. 180, would not be in conformity to the laws in force in the District of Columbia if made in a newspaper published on Sunday. The provisions of that act must be construed in connection with the other statute law of the District, and they are not to be taken to repeal any part of the latter unless where necessarily repugnant thereto. *Opinion of June* 30, 1877, 15 Op. 327.

20. Opinions of August 14, 1876, and May 21, 1877 (15 Op. 282, 594), upon the scope and effect of sections 853 and 854 Rev. Stat., in regard to departmental advertising, reconsidered and reaffirmed. *Opinion of July* 7, 1877, 15 Op. 633.

21. The provisions of section 3828 Rev. Stat., forbidding the publication of advertisements "for any Executive Department of the Government, or for any Bureau thereof, or for any office therewith connected," except "under written authority from the head of such Department," extend to offices connected as aforesaid, no matter where located. *Opinion of Dec.* 16, 1878, 16 Op. 616.

AGENT.

See also CLAIM AGENT; INDIAN AGENTS AND AGENCIES; NAVY AGENT; PENSION AGENCIES AND AGENTS; POWER OF ATTORNEY.

1. An ordinary letter from R. M. H. to J. H. E., authorizing the latter to transact certain business for the former, does not empower him to execute, in the name of the former, a power of attorney, assignment, or other instrument under seal. *Opinion of Aug.* 11, 1853, 6 Op. 79.

2. The conclusions of law in a previous opinion in the case of the late Navy Agent E. O. Perrin (see opinion of Feb. 27, 1854, 6 Op. 314) reaffirmed. *Opinion of May* 22, 1854, 8 Op. 450.

3. When a commissioned officer or other agent of the United States makes a contract with any person for their use and benefit, and with due authority of law, such officer or other public agent is not responsible to the party, whose only remedy is against the Government. *Opinion of April* 10, 1855, 7 Op. 88.

4. But, in making contracts with any one claiming to act for the Government, it is the duty of the party contracting to inquire as to the authority of such agent or officer; without which it is doubtful whether the contract affects the Government. *Ibid.*

5. If a public officer, however, make a Government contract without authority, and which therefore does not bind the Government, such officer is himself personally responsible to the contracting parties. *Ibid.*

6. But a public officer or other agent, though contracting for the Government, may, if he see fit, make himself the responsible party, either exclusively or in addition to the Government. *Ibid.*

7. Heads of Departments or of Bureaus, and other certifying officers of the Government, cannot certify by delegation, unless when specially authorized so to do by act of Congress. *Opinion of Nov.* 9, 1855, 7 Op. 594.

8. A claimant of money payable from the Treasury has the right to choose his own agents and attorneys for collection, and to change them at pleasure. *Opinion of Dec.* 21, 1863, 11 Op. 7.

9. In the absence of special contract, fees or compensation payable by a claimant to his at-

torney constitute a general charge against the client, but not a specific lien on the subject-matter of the claim. *Ibid.*

10. The conflicting equities between a claimant and his attorneys should be left by the Executive Departments to be settled before the courts. *Ibid.*

AGENT OF THE TREASURY.

See also SOLICITOR OF THE TREASURY.

The act of May 15, 1820, chap. 107, makes it the duty of the agent of the Treasury, appointed thereunder, to instruct district attorneys when, against whom, and for what amount to institute suits; when to press the collection and when to indulge; when, and under what circumstances of additional security, to renew the debts; what substitution, what commutations, what partial payments, what compromises to accept; when to acquiesce in the decisions of the courts below, and when to appeal; always leaving to the learning of the law officer (district attorney) the direction of all measures merely technical and professional. *Opinion of April* 11, 1823, 1 Op. 612, 613.

AGRICULTURAL FUND.

1. All the existing legislation appropriating money for the collection of agricultural statistics evinces an intention on the part of Congress that the money appropriated for that object should be expended and accounted for by the Commissioner of Patents. *Opinion of Oct.* 17, 1861, 10 Op. 147.

2. The Secretary of the Interior has no power to defeat that intention by transferring to another officer the expenditure and administration of those appropriations. *Ibid.*

3. Since the act of May 15, 1862, chap. 72, the Commissioner of Patents is not authorized to use the unexpended portion of the appropriation for agricultural purposes of the preceding year to pay the debts of that year chargeable on that fund. *Opinion of Sept.* 18, 1862, 10 Op. 344.

4. It is the duty of the Commissioner of Agriculture to take charge of that fund, and see to the payment of claims against it. *Ibid.*

ALASKA.

1. The provisions of the act of July 1, 1870, chap. 189, to prevent the extermination of fur-bearing animals in Alaska, considered and construed with reference to the authority and duty of the Secretary of the Treasury touching the time and mode of executing the same, so far as they relate to the granting of a lease of the right to engage in the business of taking fur-seals on the islands of Saint Paul and Saint George, and the parties to whom such lease may be granted by him. *Opinion of July* 6, 1870, 13 Op. 274.

2. Proposals for a lease of the exclusive right to take fur-seals upon certain islands off the coast of Alaska, agreeably to the provisions of the act of July 1, 1870, chap. 189, having been solicited by the Secretary of the Treasury, a party, besides other considerations, offered to pay a stated amount on each skin in addition to the revenue tax specified in that act, and also a stated amount for each gallon of oil obtained from the seals: *Held* that those parts of the bid are in conformity to the statute, and would be binding if incorporated in the lease. *Opinion of July* 29, 1870, 13 Op. 293.

3. The buildings in Alaska, consisting of warehouses, store-houses, blacksmith-shops, cooper-shops, fish-houses, dwelling-houses, &c., purchased by Hutchinson, Kohl & Co. from the Russian-American Company in March, 1868, were not included in the cession made by Russia to the United States in the treaty of March 30, 1867, and did not become the property of the latter under that treaty. *Opinion of Sept.* 27, 1873, 14 Op. 303.

4. But the Russian-American Company never had anything more than the *use* of the land on which its buildings stood—the *dominium*, or right of property therein, ever remaining in the Government of Russia; and by the sixth article of the treaty the right of possession, use, and all other privileges which that company then enjoyed in the soil were in effect extinguished; so that the United States acquired under the said cession the absolute proprietorship of all the lands on which the establishments of that company were located, and as a consequence the latter could occupy such lands thereafter only by the sufferance of the Government of the United States. *Ibid.*

5. Hence, although the ownership of the buildings referred to may be in Hutchinson, Kohl & Co., under their purchase from the

Russian-American Company, they acquired no interest whatever in the soil by the purchase of such buildings; they are simply occupants of the public domain, without right or title, and at the sufferance of the Government. *Ibid.*

6. By the act of March 3, 1873, chap. 227, the introduction of spirituous liquors or wine into the Territory of Alaska, unless authorized by the War Department, is absolutely prohibited. *Opinion of Nov.* 13, 1873, 14 Op. 327.

7. By virtue of the acts of February 13, 1862, chap. 24; March 15, 1864, chap. 33; and March 3, 1873, chap. 227, the War Department is clothed with a discretionary authority over the introduction of spirituous liquors or wines into the Territory of Alaska, and may permit such articles to be taken there, whether they are or are not intended for the use of officers or troops in the service of the United States. *Opinion of June* 3, 1874, 14 Op. 401.

8. The first of these acts, though in form an amendment, is really a substitute for the whole of section 20 of the act of June 30, 1834, chap. 161, and nothing of said section not contained in that act is left in force. *Ibid.*

9. The President has no authority, by virtue of section 2132 Rev. Stat., to prohibit the introduction of molasses into the Territory of Alaska (the article being used there for manufacturing distilled spirits for sale among the natives) when in his judgment the public interest seems to require that he should do so. In this matter that Territory cannot be considered as a country belonging to an Indian tribe. *Opinion of Sept.* 24, 1878, 16 Op. 141.

ALIENS.

See also PUBLIC LANDS, IV.

1. The late governor of Guadaloupe, who had caused a vessel to be seized and condemned by authority assumed as such officer, being prosecuted in the court of Pennsylvania whilst here as a prisoner of war to the British forces on parole, is not more exempt than any other foreigner (not a public minister) from suit and arrest. *Opinion of June* 16, 1794, 1 Op. 45.

2. The Government will not interfere with a private action against a foreigner for receiving a negro on board his ship. Such defendant is, as to his liability to suit, on a footing with every foreigner, not a public minister, who comes within the jurisdiction of our courts. If he has a defense under the treaty of peace he must plead it in the usual course of judicial proceedings. *Opinion of July* 26, 1794, 1 Op. 49.

3. A person acting under a commission from the sovereign of a foreign nation is not amenable to the United States courts for what he does in pursuance of his commission. But where there may be a legal trial the President will not interfere with the action against him. *Opinion of Dec.* 29, 1797, 1 Op. 81.

4. The courts of the United States in every State are at all times open to the subjects of a foreign power in friendly relations with them; and they are entitled to claim the benefit of every legal remedy in as ample a manner as could be enforced by citizens of the United States. More especially will such remedies be extended in a case of fraud. *Opinion of Oct.* 1, 1816, 1 Op. 192.

5. An alien can inherit, carry away, and alienate personal property without being liable to any *jus detractus*, but not real estate. *Opinion of July* 30, 1819, 1 Op. 275.

6. Jaques Porlier, who settled in the Michigan Territory prior to the execution and ratification of Jay's treaty, is not a citizen of the United States. *Opinion of Sept.* 3, 1819, 5 Op. 716.

7. It is the duty of the Executive, to whom the care of our foreign relations is committed, to take all lawful measures for the protection of alien subjects of a state with whom the United States are at peace, who shall have placed themselves under the safeguard of our laws. *Opinion of July* 5, 1837, 3 Op. 254.

8. But where aliens shall have suffered violence from citizens of the United States, they can be protected only by the redress to be afforded in the courts and the special interposition of the legislature. *Ibid.*

9. The State courts only have jurisdiction of the criminal offense in such cases; the circuit court of the United States of civil actions where the offenders are citizens. *Ibid.*

10. Aliens only, in the proper acceptation of the term, are excluded from the privileges of pre-emptioners. *Opinion of March* 15, 1843, 4 Op. 147.

11. An alien can be enlisted in the naval or Marine Corps service of the United States, and is bound the same as citizens to serve for the

term of his enlistment. *Opinion of Nov.* 20, 1844, 4 Op. 350.

12. An alien may hold, convey, and devise real estate in the District of Columbia. *Opinion of Sept.* 2, 1852, 5 Op. 621.

13. Of the disability of alienage as affecting interest in land in California. *Opinion of Feb.* 3, 1855, 8 Op. 463.

14. Under the land laws of the United States aliens are entitled to purchase the public lands, subject only, as to their tenure, to such limitations as particular States may enact; with this exception, however, that pre-emptions are secured to aliens who have declared their intention to become naturalized according to law, and to citizens, whether native-born or naturalized, and none others. *Opinion of July* 28, 1855, 7 Op. 351.

15. The same distinction is maintained in the graduation acts, with the further condition that the limited quantity of land purchasable by any person at the reduced prices can be purchased only for personal use, and for actual settlement and cultivation. *Ibid.*

16. The Government of the United States has constitutional power to enter into treaty stipulations with foreign governments for the purpose of restricting or abolishing the property disabilities of aliens or their heirs in the several States. *Opinion of Feb.* 26, 1857, 8 Op. 411.

17. It seems that there is no existing treaty stipulation between the United States and the Netherlanders on the subject of the rights by inheritance of children of a deceased child of a Netherlander dying intestate in the United States. *Opinion of Aug.* 8, 1866, 12 Op. 5.

18. In this absence of treaty stipulation the subject-matter is regulated by the laws of the respective States, and they, as a general rule, recognize the children of a deceased child as entitled to represent their deceased parent in the share which he would have taken from the intestate if such deceased parent had survived the intestate, the descent being *per stirpes*, and not *per capita*. *Ibid.*

ALLOTMENT CHECKS.

The United States are legally bound to pay the allotment checks or drafts issued by Army paymasters under the act of December 24, 1861, chap. 4, in the hands of *bona fide* holders, without regard to the fact that such paymasters have not placed in the hands of the drawees sufficient funds to meet the drafts. *Opinion of Feb.* 25, 1865, 11 Op. 156.

ALLOWANCES.

See ARMY, XI; COMPENSATION, VIII; MILEAGE; MILITIA AND VOLUNTEERS, II; NAVY, VI; TRAVELING ALLOWANCES.

AMBASSADOR.

See DIPLOMATIC AND CONSULAR OFFICERS.

ANNUITY.

See INDIANS, IV.

APPEAL.

See also ACCOUNTING OFFICERS, IV; CUSTOM LAWS, XIV; PATENTS FOR INVENTIONS, IV; WRITS OF ERROR AND APPEALS.

1. In a matter which the law confides to the pure discretion of the Executive, the decision by the President or proper head of Department of any question of fact involved is conclusive, and is not subject to revision by any other authority in the United States. *Opinion of Nov.* 23, 1853, 6 Op. 226.

2. There is no direct appeal from the Commissioner of Pensions to the Attorney-General. *Opinion of July* 8, 1856, 7 Op. 759.

3. The President ought not, as a general rule, to entertain an appeal from the decision of the head of a Department respecting a private claim against the Government. *Opinion of Oct.* 9, 1863, 10 Op. 526.

4. Nor, as a general rule, ought the President to entertain appeals from the heads of Bureaus or other inferior officers of the Executive Departments. *Opinion of Oct.* 9, 1863, 10 Op. 527.

5. An appeal from a decision of the Commis-

sioner of the General Land Office ought to be taken not to the President, but to the Secretary of the Interior. *Ibid.*

6. Under the act of March 3, 1857, chap. 104, requiring the Commissioner of the General Land Office to state an account between the United States and the State of Illinois of the "2 per cent. fund," the State has no legal right to take an appeal to the President, and require him to state such account, after the refusal of the Commissioner of the General Land Office and of the Secretary of the Interior to comply with the law. *Opinion of March* 8, 1864, 11 Op. 14.

7. The President is not an auditor or comptroller of accounts, nor the accountant-general of the nation; but he may require an accounting officer and other subordinate executive officers to perform the duty imposed on them by statute. *Ibid.*

8. The opinions of the Attorneys-General touching the relation of the President towards the administrative officers of the Departments and Bureaus reviewed. *Ibid.*

9. It is competent to the President to entertain an appeal from the head of a Department which concerns the authority of a subordinate officer in the Department. *Opinion of May* 15, 1876, 15 Op. 94.

10. Where a statute imposes a particular duty upon an executive officer, and he has acted (performed the duty according to his understanding of the statute), there is no appeal from his action to the President or to any other executive officer, unless such appeal is provided for by law. *Opinion of May* 2, 1879, 16 Op. 317.

APPOINTMENT.

See ARMY, II; MARINE CORPS, III; NAVY, II; OFFICE, I.

APPROPRIATIONS.

I. *Generally*
II. *Transfer of.*
III. *Unexpended balances.*

I. Generally.

1. Where an appropriation act (that of March 3, 1839, chap. 93) expressed a sum for the aggregate of certain expenses which was less than the aggregate, in fact, of the several items of expense therein enumerated: *Held* that the amount equal to all the items was appropriated, and that an erroneous addition of said items produced no effect upon the law. *Opinion of March* 13, 1839, 3 Op. 419.

2. The expenses incurred on account of the negroes taken out of the Amistad cannot be defrayed from the appropriation of March 3, 1819, in the act entitled "An act in addition to the acts prohibiting the slave trade." *Opinion of April* 11, 1840, 3 Op. 510.

3. The appropriation for repairs, improvements, and new machinery at Harper's Ferry Armory, made by the act of August 8, 1846, chap. 95, cannot, nor can any portion of it, be applied to the purchase of the lands described in the estimate made at the Ordnance Office. Although a portion of the appropriation was asked for with a view to the purchase of lands, Congress saw fit to specify the purposes for which it granted it, among which the purchase of lands is not included. *Opinion of Sept.* 18, 1846, 4 Op. 533.

4. The contract for embankment in the navy-yard at Memphis is not within the true meaning of the proviso in the naval appropriation act of March 3, 1843, chap. 83. *Opinion of April* 20, 1849, 5 Op. 89.

5. Where an appropriation was made by Congress expressly for opening or improving a maritime channel by a particular method mentioned: *Held* that the specification is not to be so construed as to defeat or control the general object. *Opinion of April* 11, 1853, 6 Op. 19.

6. In the absence of any specific appropriations for the object, the expense of transporting prisoners held for trial by the authorities of the United States in China is a lawful charge on the general appropriations for defraying the judicial expenses of the Government. *Opinion of June* 28, 1853, 6 Op. 59.

7. The incidental expenses attending the purchase, care, preservation, and transportation of provisions and clothing for the Navy are not chargeable to the specific appropriations for provisions and clothing made by the act of March 3, 1853, chap. 102. *Opinion of June* 22, 1854, 6 Op. 569.

8. Under the act of March 3, 1859, chap. 83, appropriating for the payment to the State of Minnesota, for expenses incurred by Captain

Starkey's company of Minnesota Volunteers, called out by the governor of the Territory, a sum of money, or so much thereof as may be necessary, the accounting officers of the Treasury are to determine, before any payment is made, what amount the State is entitled to receive. *Opinion of Nov.* 4, 1859, 9 Op. 396.

9. Where an act of Congress (that of February 20, 1847, chap. 14) authorized the Secretary of War to report how much was due to a claimant, not exceeding $25,000, and directed the amount to be paid out of the Treasury, and the then Secretary of War reported as due to the claimant the sum of $18,000, which was paid: *Held* that the appropriation was exhausted when the amount awarded was paid, and that a succeeding Secretary had no jurisdiction to award the claimant an additional amount. *Opinion of July* 20, 1860, 9 Op. 451.

10. The rules by which officers in charge of appropriations are to be governed in applying the fund of one year to pay the debts of a previous year stated. *Opinion of Sep.* 18, 1862, 10 Op. 344.

11. By the terms of the act of March 3, 1865, chap. 127, "making appropriations for the current and contingent expenses of the Indian Department," &c., for the year ending June 30, 1866, the appropriations therein made for the relief and support of certain refugee Indians and for payment of interest on non-paying stock held in trust for Indian tribes can be rightfully drawn upon by the Secretary of the Interior before the commencement of the fiscal year ending June 30, 1866. *Opinion of March* 22, 1865, 11 Op. 171.

12. The appropriations made by the acts of April 16, 1862, chap. 54, and July 16, 1862, chap. 182, for the purposes of facilitating the colonization of persons of African descent, cannot be used to pay the salary of the "Commissioner of Colonization" for services rendered after the passage of the act of July 2, 1864, chap. 210. *Opinion of June* 2, 1865, 11 Op. 241.

13. The 20 per centum increase of compensation allowed by section 3 of the act of June 25, 1864, chap. 147, to the employés of the several Departments for the fiscal year ending June 30, 1866, is not payable from the appropriation made by that section, such appropriation terminating with the fiscal year ending June 30, 1865 *Opinion of Oct.* 30, 1865, 11 Op. 387.

14. Claims allowed under the act of July 4, 1864, chap. 240, are not payable from appropriations made for the fiscal year 1870–'71, none of those appropriations seeming to be for that object. *Opinion of July* 27, 1870, 13 Op. 289.

15. Appropriations which, in terms, are for the service of the year 1870–'71 cannot be used for any other purpose than the payment of the expenses incurred for the service of that year. *Ibid.*

16. Nor can money be taken, by counter requisitions, from such appropriations to settle old accounts. *Ibid.*

17. *Permanent* appropriations are those made for an unlimited period; *indefinite* appropriations are those in which no amount is named. *Ibid.*

18. The appropriations made by the acts of June 15, 1864, chap. 124, and March 3, 1865, chap. 81, "for supplies, transportation, and care of prisoners of war," are in terms applicable to none but prisoners of war. *Opinion of May* 14, 1872, 14 Op. 41.

19. By the words "prisoners of war," as used in those acts, are meant persons of the enemy who are captured and detained by our forces; and therefore Union soldiers who were captured by the rebels and afterward escaped or were paroled are not within the scope of the appropriations mentioned. *Ibid.*

20. Accordingly, where persons of the latter description were supplied with necessaries of life and otherwise aided by a private party, who presents a claim against the Government for reimbursement of his outlays and compensation for his services: *Held* that the claim, however meritorious it may be, cannot be paid out of either of those appropriations. *Ibid.*

21. By act of March 3, 1871, chap. 113, an appropriation was made to meet (*inter alia*) the expenses of publishing specifications and drawings required by the Patent Office during the year ending June 30, 1872. The appropriation was to be disbursed by the Superintendent of Public Printing, under whose direction the execution of the work mentioned was then placed; but by the act of March 24, 1871, chap. 5, the Joint Committee of Congress on Printing was authorized to transfer the direction of

the work to the Commissioner of Patents, should it be deemed expedient to do so, and on the 16th of June, 1872, such transfer was made: *Held* that, notwithstanding the transfer of the direction of the work, the appropriation was still applicable to the payment of expenses incurred in its prosecution, and might therefore be employed by the Superintendent of Public Printing in payment of work done under the direction of the Commissioner of Patents; *yet held, also*, that under section 5 of the act of July 12, 1870, chap. 251, the appropriation having been made specifically for the fiscal year ending June 30, 1872, was only applicable to expenses incurred during that year, or to the fulfillment of contracts made within the same period. *Opinion of July* 13, 1872, 14 Op. 58.

22. The proviso in the Army appropriation act of March 3, 1875, chap. 133, viz, "that no part of this sum shall be paid for the use of any patent process for the preservation of cloth from moth or mildew," does not forbid the application of any patent process to the preservation of clothing where the use of the same may be obtained without paying or incurring any obligation to pay therefor. The appropriation referred to may accordingly be employed in applying the Cowles process, if its use can be had without charge. *Opinion of Aug.* 25, 1875, 15 Op. 37.

23. The appropriation made by the act of March 3, 1877, chap. 105, to pay the amount due to mail contractors "for mail service performed" in certain Southern States before the war of the rebellion, is not applicable to the payment of a claim for one month's additional pay to which a contractor became entitled by his contract where the same was arbitrarily terminated by the Government, such claim being in the nature of a claim for liquidated damages. *Opinion of July* 5, 1877, 15 Op. 329.

24. The appropriation of $75,666.50 to pay for horses, steamboats, and other property lost in the military service, made by the act of June 14, 1878, chap. 191, was not intended to apply to the steamboat B. P. Cheney. The provision in the act of June 20, 1878, chap. 359, declaring that said appropriation should not be construed to authorize the payment of the claim for that steamboat without further legislation is explanatory of the former enactment. The amount of the appropriation is, subject to the requisition of the Secretary of War, to be applied to those objects which the appropriation describes, with that exception. *Opinion of Nov.* 23, 1878, 16 Op. 213.

25. Section 2 of the act of June 19, 1878, chap. 328, providing that $20,000 be placed to the credit of the contingent fund of the Senate, is to be construed as if the words "said investigations and inquiries as have already been," &c., read "*such* investigations and inquiries as have already been," &c. *Opinion of Dec.* 28, 1878, 16 Op. 235.

26. The contingent fund of the War Department cannot be applied to meet the expense attending the employment of a detective to discover and furnish evidence necessary to convict the persons concerned in setting fire to certain buildings which were rented for the Quartermaster's Department at Atlanta, Ga. *Opinion of Dec.* 19, 1879, 16 Op. 412.

27. The words "contingent expenses," as used in the appropriation acts, mean such incidental, casual expenses as are necessary or appropriate and convenient in order to the performance of duties required by law of the Department or the office for which the appropriation is made. *Ibid.*

II. Transfer of.

28. The President does not possess the power to order any portion of a specific appropriation for the mileage and pay of members of the House of Representatives to be transferred to the contingent fund of that body. *Opinion of April* 8, 1839, 3 Op. 442.

29. The President has power, under section 2 of the act of July 2, 1836, chap. 268, to direct appropriations for one fortification to be transferred to another, the provision therefor being construed to be perpetual. *Opinion of Nov.* 3, 1842, 4 Op. 110.

30. Since the passage of the act of August 31, 1842, chap. 286, the President has no power to direct transfers in the Navy Department of moneys appropriated for one particular branch to the account of another branch of expenditure. *Opinion of Oct.* 23, 1843, 4 Op. 266.

31. The limitation imposed by the last clause of the act of February 23, 1844, chap. 3, "to authorize the President of the United States to direct transfers of appropriations for the naval service under certain circumstances," does not

fetter the authority to transfer from any general head of appropriation left unaffected by the previous clause. It applies only to appropriations for specific and local objects, from which the act inhibits any diversion. *Opinion of Feb.* 29, 1844, 4 Op. 310.

32. The President may, if he deems it conducive to the public interest, direct transfers of appropriations from the branch of expenditure of incidental expenses of the Quartermaster's Department to the other branches of barracks, quarters, &c., and of transportation of officers' baggage. *Opinion of April* 21, 1845, 4 Op. 363.

33. Congress having taken from the Executive the power to transfer appropriations from one head of expenditure to another in the Navy Department, no portion of the money appropriated by the act of June 17, 1844, chap. 107, for books, maps, charts, and instruments, and for binding and repairing the same for the Hydrographical Office can be transferred and applied to the building of a house for the superintendent. *Opinion of Aug.* 18, 1845, 4 Op. 428.

34. The President is not authorized to direct a surplus of an appropriation for the Winnebago Indians to be transferred to meet expenses in the Department of the Interior, for which the appropriation is inadequate, or for which none had been made. *Opinion of April* 25, 1849, 5 Op. 90.

35. Nor can the head of the Department find sufficient authority in the twenty-third section of the act of August 26, 1842, chap. 202, to authorize him to make such a transfer. The power given by that act is limited to transfers within the same Bureau, and to appropriations for such objects as are enumerated in its twenty-second section. *Ibid.*

36. The head of a Department is authorized by the twenty-third section of the act of August 26, 1842, chap. 202, to transfer the surplus of an appropriation for one or more objects of expenditure to supply the deficiency of any other item of appropriation in the same Department or office. *Opinion of Nov.* 26, 1850, 5 Op. 273.

37. The twenty-third section of the said act is not a temporary but a permanent enactment, and limits transfers by the heads of Departments to the surplus of appropriations, whilst the power conferred upon the President extends to entire appropriations. *Ibid.*

38. So, also, the act of August 26, 1842, chap. 202, authorizes the transfer and application of the surplus of appropriations standing to the credit of the War Department to supply the deficiency of appropriation for preventing and suppressing Indian hostilities. *Opinion of Nov.* 30, 1850, 5 Op. 274.

39. The twenty-third section of the act of August 26, 1842, chap. 202, authorizes the transfer and application of the surplus of appropriations standing to the credit of the War Department, and not transferred by the Secretary of the Treasury to the general account of moneys not appropriated, to supply the deficiency of the appropriation for preventing and suppressing Indian hostilities. *Opinion of Dec.* 5, 1850, 5 Op. 283.

40. Such transfer will not conflict with the first article, eighth section, and twelfth paragraph of the Constitution of the United States, nor with the sixteenth section of the act of March 3, 1795, chap. 45. *Ibid.*

III. Unexpended Balances.

41. Moneys appropriated to the service of the War Department, and remaining unexpended in the Treasury, may be carried to the surplus fund, without a report from the Secretary of War that such moneys are no longer required, after the expiration of two years from the calendar year in which they are appropriated. *Opinion of March* 30, 1831, 2 Op. 442.

42. Where moneys appropriated to the service of the War Department remain unexpended in the Treasury, and the object of the appropriation has been effected, they may be carried to the surplus fund within two years from the calendar year in which they were appropriated, upon receiving such report from the Secretary of War. *Ibid.*

43. So, where such moneys, under like circumstances, are in the hands of the Treasurer as agent for that Department; in which case the Secretary of War is required to cause them to be repaid into the Treasury, and they are then subject to transfer to the surplus fund. *Ibid.*

44. When, after the expiration of two years from the date of the appropriation, such moneys are in the hands of such agent, the Secretary of War is required to report the fact to the Secretary of the Treasury, whose duty it

then becomes to cause them to be transferred to the surplus fund. *Ibid.*

45. When such moneys, having remained unexpended in the hands of the Treasurer as agent, have been repaid into the Treasury after the appropriation from which they were drawn had been carried to the surplus fund, they must also be carried to that fund on being so repaid. *Ibid.*

46. A transfer of the unexpended balance of the appropriation made by the act of July 2, 1836, chap. 267, for carrying into effect the treaty of December 29, 1835, with the Cherokees, is not required by law; and, although two years have elapsed, Congress has shown no disposition to abandon the project of their removal, but, on the contrary, passed acts to promote the object. Wherefore it is competent for the War Department to make a requisition for such unexpended balance. *Opinion of Feb.* 14, 1839, 3 Op. 415.

47. The act of March 3, 1839, chap. 231, for the relief of certain claimants, being for reimbursement of a sum of money advanced on account of the United States, comes within the equity of the exception in the sixteenth section of the act of March 3, 1795, chap. 45—"reimbursement, according to contract, of any loan made on account of the United States." *Opinion of March* 15, 1843, 4 Op. 148.

48. But if the practice of the Department respecting the disposition to be made, after two years, of appropriations be settled, such practice should be pursued. *Ibid.*

49. Under the acts of March 3, 1795, chap. 45; May 1, 1820, chap. 52; and August 31, 1852, chap. 108, in general, a balance of appropriation remaining unexpended at the expiration of two years is carried to the "surplus fund," and can be withdrawn therefrom only by new appropriation—except in the case of appropriations for objects to which a duration longer than two years is assigned by law; as to which, and especially expenditures in the War and Navy Departments, the specific appropriations remain in charge of the latter until, on report therefrom of the object being consummated, the money is credited to the "surplus fund" at the Treasury Department. *Opinion of Oct.* 9, 1854, 7 Op. 1.

50. In general, an appropriation or a balance thereof, made in any year for any continuous contract or other service of the Government, may be applied to the same service during the succeeding or any subsequent year, and does not lapse into the "surplus fund" until the particular object be consummated. *Ibid.*

51. Conversely, whenever, in any given year, the appropriation for a particular service proves deficient, a balance remaining of the appropriation for the same service in a previous year may be drawn upon to supply the deficit; or rather the balance of the preceding year commences the service of the new year, and is expended before any question arises of the new appropriation; and thus, at the end of each year, the true unexpended balance is only what remains unexpended of that single year's appropriation. *Ibid.*

52. Where a contract or other claim on the Government is a continuous one, and still current, then the balance remaining of the appropriation made in one year for such service laps over into the following year, and is continuously applicable to the same subject. *Opinion of Nov.* 2, 1854, 7 Op. 14.

53. Such is the legal effect, even though the appropriation be but annual in its terms. *Ibid.*

54. It is proper, in such a case, to begin, in each successive year, by expending the balance of the previous year before entering upon the appropriation for the current year. *Ibid.*

55. The act of March 3, 1869, chap. 122, providing "for the completion of a custom-house, &c., at Knoxville, East Tennessee, *in addition to former appropriations*, $5,000," does not reappropriate any of the unexpended balances of such former appropriations which had previously been carried to the surplus fund under the requirements of law. *Opinion of Jan.* 5, 1870, 13 Op. 181.

56. Under the provisions of the act of July 12, 1870, chap. 251, balances of appropriations made for the year 1869–'70, of any description, may be applied to the service of the year 1870–'71, so far as, first, to pay in the latter year expenses properly incurred in the former year; and, second, to pay dues upon contracts properly made within the former year, though such contracts be not performed till within the latter year. *Opinion of July* 27, 1870, 13 Op. 289.

57. Neither the fifth nor the seventh section of that act places any restriction upon the use of balances, first, where they are from appropriations not made in annual appropriation bills; second, where they are from appropria-

tions not made especially for a particular fiscal year; third, where they are from appropriations known as permanent; and, fourth, where they are from appropriations known as indefinite. *Ibid.*

58. The Secretary of the Interior is authorized to apply certain unexpended balances of appropriations to defray certain charges incurred by his Department in connection with the Centennial Exhibition. *Opinion of March* 3, 1877, 15 Op. 204.

59. The provision in the act of August 15, 1876, chap. 289, making appropriations for the Indian Department for the year ending June 30, 1877, namely, "That amounts now due employés for year ending June 30, 1876, may be paid out of unexpended balance of the incidental fund of said year," considered in connection with sec. 3682 Rev. Stat.; and *held* that under that provision amounts due for clerical or official services in the Indian service for the year ending June 30, 1876, may be paid out of the unexpended balance of the incidental fund of the Indian service for the same year. *Opinion of Jan.* 21, 1878, 15 Op. 434.

60. The term "employés," as used in the same provision, was meant to include all those who performed services in any capacity in the Indian service during the year ending June 30, 1876, whose employment was authorized by law, and whose compensation remained unpaid at the date of the act of August 15, 1876. *Ibid.*

ARKANSAS.

1. The State of Arkansas, on the 11th of May, 1864, was in a condition of insurrection against the United States; and an act of assembly of the State, passed on that day, was not a valid acceptance by the legislature of the State of the act of Congress of July 2, 1862, chap. 130, known as the agricultural college grant. *Opinion of Aug.* 16, 1866, 12 Op. 11.

2. The act of December 13, 1872, chap. 2, does not require interest on overdue coupons of the bonds of the State of Arkansas, then held by the United States as Indian trust funds, to be exacted by the Secretary of the Interior in the "arrangement" to be made by the State mentioned in the proviso of the first section of that act. *Opinion of May* 26, 1873, 14 Op. 611.

ARMY.

See also ALLOTMENT CHECKS; MILITIA AND VOLUNTEERS; INVALID AND DISABLED SOLDIERS.

As to Pay of Army, see COMPENSATION, III.

I. *Generally.*
II. *Appointment and Promotion.*
III. *Brevets.*
IV. *Rank.*
V. *Relative Rank.*
VI. *Transfer of Officer.*
VII. *Resignation.*
VIII. *Holding Civil Office.*
IX. *Dismissal or Removal of Officer.*
X. *Restoration to Lost Rank.*
XI. *Allowances to Officers.*
XII. *Pay Accounts of Officers.*
XIII. *Longevity.*
XIV. *Examining Board.*
XV. *Retired List.*
XVI. *Enlistment.*
XVII. *Minors.*
XVIII. *Stoppage of Pay.*
XIX. *Money of Enlisted Persons.*
XX. *Furlough.*
XXI. *Discharge.*
XXII. *Regulations.*
XXIII. *Civil Authorities.*

I. Generally.

1. The term "major" in the provision of the third section of the act of April 24, 1816, chap. 69, regulating the pay of battalion and regimental paymasters, and providing that they shall receive the pay and emoluments of a major, may be taken to mean a major of infantry. *Opinion of Feb.* 17, 1825, 1 Op. 704.

2. The office of Paymaster-General was within the policy of the act of May 15, 1820, chap. 102, and is not affected by the subsequent act of the 2d of March, 1821, chap. 13. *Opinion of April* 20, 1826, 2 Op. 27.

3. The Adjutant-General of the Army, under the act of March 2, 1821, chap. 13, may hold at the same time the office of Adjutant-General, with the rank of colonel of cavalry, and that

of major of the Second Regiment of Artillery. *Opinion of April* 28, 1834, 2 Op. 644.

4. Soldiers in the military service of the United States may bring actions to recover damages in State courts for assaults and batteries committed on them by non-commissioned officers within the limits of a fort. *Opinion of Feb.* 18, 1840, 3 Op. 498.

5. Military storekeepers are all of one grade, and alike subject, as to their place of duty, to the orders of the Secretary of War. *Opinion of March* 27, 1853, 6 Op. 7.

6. The cadets of the Military Academy at West Point appertain by law to the Corps of Engineers, are therefore a part of the land force of the United States, and as such are subject to the rules and articles of war. But they are not "non-commissioned" officers of the acts of Congress and the general regulations, which expression means "sergeants and corporals," and is inapplicable to the cadets. They are inchoate officers of the Army, and subject by statute and regulation to no discipline incompatible with that character. *Opinion of July* 11, 1855, 7 Op. 323.

7. The undergraduate cadets, in their internal academic organization as officers, noncommissioned officers, and privates, are not subject to the articles of war as respects their relation to one another, but only as respects their relation to commissioned officers of the Army on duty as such in the academy. *Ibid.*

8. Army sutlers are not subject to a license in the State of California on sales made by them to officers or soldiers of the Army, nor to tax on goods kept by them at a military post for that purpose; but sutlers may be compelled to pay license if they enter into general trade within the State. *Opinion of Oct.* 27, 1855, 7 Op. 578.

9. Brigadier-General Saxton had no power under the order of the War Department of June 16, 1862, assigning him "to duty in the Department of the South," to erect at Port Royal, S.C., a judicial tribunal with authority to determine civil causes between citizens of the United States temporarily within that department. *Opinion of Jan.* 30, 1865, 11 Op. 149.

10. The military forces of the United States can have nothing to do with the redress of private grievances or prosecutions for public wrongs committed during the riots in Memphis, Tenn., in May, 1866. *Opinion of July* 13, 1866, 11 Op. 531.

11. A post chaplain in the Army is an "officer" within the meaning of the thirty-first section of the act of March 3, 1863, chap. 75. *Opinion of Oct.* 26, 1868, 12 Op. 519.

12. The present incumbents of the office of judge-advocate are officers of the regular Army of the United States, lawfully appointed and commissioned. *Opinion of June* 14, 1869, 13 Op. 96.

13. Provisions of the act of July 17, 1862, chap. 201, and subsequent statutes relating to these officers, considered. *Ibid.*

14. Regimental quartermasters are not officers of the Quartermaster's Department; they are properly staff officers of their respective regiments, who, besides other duties, are charged with the custody and issuing of supplies. *Opinion of Sept.* 2, 1870, 13 Op. 315.

15. Where an Army officer was mustered out of service with one year's pay and allowances, under the third section of the act of July 15, 1870, chap. 294, and in about two years afterward was reappointed to an office in the Army: *Held* that there was no authority to compel him to refund such pay and allowances, and that the same could not be legally retained out of his pay. *Opinion of May* 6, 1873, 14 Op. 230.

16. One complete annual return of ordnance and ordnance stores, with quarterly reports noting all intermediate changes since last return, if sanctioned by the Chief of Ordnance and approved by the Secretary of War, is sufficient under the provisions of the acts of March 3, 1813, chap. 48, and February 8, 1815, chap. 38. *Opinion of Aug.* 2, 1873, 14 Op. 289.

17. Act of June 23, 1874, chap. 499, directing the Secretary of War "to amend the record of the said A. H. Von Luettwitz so that he shall appear on the rolls and records of the Army for rank as if he had been continuously in service," construed. And *held* that it is the duty of the Secretary, under the act, to erase from the rolls and records any entry or statement showing that Von Luettwitz was cashiered; but this will not *ipso facto* restore the latter to the office from which he was dismissed. *Opinion of Aug.* 13, 1874, 14 Op. 448.

18. Considering the intent of the act, however: *Advised* that the President is authorized

thereby to immediately appoint Von Luettwitz a first lieutenant in the usual way, with pay to commence from the date of the act. *Ibid.*

19. Under the act of March 3, 1857, chap. 106, Brevet Lieutenant-General Scott was entitled, when exercising command according to that rank, and then only, to the staff to which he had appointed General Hamilton; and upon the retirement of the former from active service, and consequent withdrawal from command, to wit, on the 1st of November, 1861, the appointment of the latter was *ipso jure* revoked. *Opinion of Nov.* 28, 1874, 14 Op. 506.

20. On the 15th of December, 1870, P., a captain of cavalry, was discharged from service, at his own request, under section 3 of the act of July 15, 1870, chap. 294, receiving a year's pay and allowances. On the 19th of May, 1876, he was appointed a second lieutenant of infantry. *Held* that the provisions of the second section of the act of March 3, 1875, chap. 159, do not apply; and accordingly that P. is not required to refund the pay and allowances mentioned. That section is limited to those who were mustered out as "supernumerary officers" under section 12 of the act of 1870, and who subsequently to the act of 1875 are reappointed. *Opinion of Nov.* 15, 1876, 15 Op. 177.

21. Congress adjourned March 3, 1877, without providing for the payment of the Army subsequent to June 30 of that year. Inquiry being made whether, if the necessary funds can be furnished by individual contribution, they can properly be used for that purpose, and the Army thus supported until the next session of Congress: *Advised* (after reviewing the constitutional and legislative provisions bearing on the subject) that this means of paying the Army cannot properly be employed by the President. *Opinion of March* 21, 1877, 15 Op. 209.

22. A certificate of merit cannot be issued, under section 1216 Rev. Stat., to a soldier who applies for the same after his discharge. It is contemplated by that section that the applicant shall continue to be, at the time of the issuance of the certificate, a soldier of the United States. *Opinion of May* 9, 1878, 16 Op. 9.

23. The provisions of section 8 of the act of June 18, 1878, chap. 263, giving to Army officers the privilege of purchasing fuel at the rate of $3 per cord for standard oak wood, do not extend to retired officers of the Army. *Opinion of July* 18, 1878, 16 Op. 93.

24. The words in that section "or an equivalent rate for other kinds of fuel, according to the regulations now in existence," are to be understood as only authorizing a sale of the quantity of other fuel for $3 (viz, 1,500 pounds of anthracite coal or 30 bushels of bituminous coal) which, by the regulations, is made the equivalent of a cord of standard oak wood. *Ibid.*

25. The number and rank of the officers authorized by law to be permanently maintained in the Inspector-General's Department in the Army are fixed by the acts of June 23, 1874, chap. 458, and December 12, 1878, chap. 2, as follows: One brigadier-general, two lieutenant-colonels, and two majors. *Opinion of Oct.* 2, 1879, 16 Op. 638.

II. Appointment and Promotion.

26. Under the acts of February 11, 1847, chap. 8, and July 19, 1848, chap. 104, no promotion in the Quartermaster's Department can be made from the grade of assistant quartermaster to that of quartermaster until the number of officers in the latter shall be reduced by vacancies occurring, so that the sum total of the grade shall not exceed the statute standard of the peace establishment of the United States. *Opinion of April* 21, 1855, 7 Op. 108.

27. An assistant surgeon in the Army was dismissed by the sentence of a court-martial. He was subsequently nominated as assistant surgeon, and confirmed by the Senate, with a recommendation that he should take rank according to the date of his original commission. This rank would entitle him, according to the usual rules of promotion, to be appointed a full surgeon. But while he was out of the Army all the places of full surgeon had been filled by the promotion of his juniors. *Held* that the promotion of the juniors was legal, and that the only benefit which the officer in question could derive from his rank was the right to be appointed a full surgeon upon the happening of the next vacancy. *Opinion of April* 22, 1857, 9 Op. 20.

28. The two regiments of cavalry raised under the act of March 3, 1855, chap. 169, are a distinct arm of the service, and as such reg-

ulate promotions therein. *Opinion of March* 16, 1859, 9 Op. 293.

29. The appointment of a commissioned officer is not perfected, and is entirely within the power of the President, until a commission is issued. *Opinion of March* 17, 1859, 9 Op. 297.

30. By force of the act of August 6, 1861, chap. 58, Capt. Howard Stansbury, of the Topographical Engineers, became entitled to promotion to the rank of major in that corps, and should receive such promotion as of a date immediately following that act. *Opinion of Oct.* 14, 1861, 10 Op. 144.

31. The third section of the act of August 3, 1861, chap. 42, providing for the better organization of the military establishment, which authorizes the promotion of captains of the Army in the Quartermaster's Department to the rank of major after fourteen years' continuous service, only applies to captains who have served fourteen years continuously in the Quartermaster's Department. *Opinion of Jan.* 10, 1862, 10 Op. 166.

32. The President made appointments of chaplains to Army hospitals before the passage of any law authorizing them; subsequently he made known the fact to Congress, and by the act of July 17, 1862, chap. 200, section 9, the appointments of chaplains to Army hospitals theretofore made by the President were confirmed: *Held* that it was not necessary that the persons so appointed by the President and confirmed by statute should be again nominated to the Senate for its advice and consent. *Opinion of Feb.* 3, 1863, 10 Op. 449.

33. The statutes prescribing the qualifications of chaplains in the Army do not preclude the appointment of a Christian minister to the office of chaplain because he may be a person of African descent. *Opinion of April* 23, 1864, 11 Op. 37.

34. By the laws and regulations of the military service in force at the passage of the act of March 3, 1869, chap. 124, vacancies in established regiments and corps, to the rank of colonel, were required to be filled by promotion according to seniority, except in case of disability or other incompetency. *Opinion of April* 5, 1869, 13 Op. 13.

35. But these laws and regulations do not confer upon the officer next in the order of succession any right to the vacant place; this he can acquire only by virtue of a new commission. *Ibid.*

36. The second and sixth sections of said act operate to prevent the nomination for promotion of infantry and staff officers who were eligible to promotion prior to March 3, 1869, except as therein provided. *Ibid.*

37. The right of an individual to an office in the Army to which he has been nominated and confirmed is not a vested one until his commission has been signed by the President. *Opinion of May* 8, 1869, 13 Op. 44.

38. Until the commission has been signed it is within the discretionary power of the President to withhold it. *Ibid.*

39. Vacancies which, under section 12 of the act of July 15, 1870, chap. 294, were intended by Congress to be filled from officers placed on the supernumerary list in pursuance of the provisions of that section, comprised only such vacancies as should occur prior to January 1, 1871; hence a vacancy occurring on or after that date was excluded from the operation of the above-mentioned enactment. *Held*, accordingly, that where S., a colonel of infantry, was at his own request honorably discharged from the service, the discharge to take effect January 1, 1871, E., a lieutenant-colonel on the supernumerary list, was not entitled to the place thus made vacant, and was lawfully mustered out of service under an order dated January 2, 1871. *Opinion of Feb.* 11, 1871, 13 Op. 380.

40. Vacancies created in the Quartermaster's Department by the act of July 28, 1866, chap. 299, from above the rank of assistant quartermaster to that of colonel, were required to be filled by promotion according to seniority, except in case of disability or other incompetency. *Opinion of Jan.* 22, 1872, 14 Op. 2.

41. The Army Regulations of 1863, in regard to promotions in the Army, have, by virtue of section 37 of the said act, the force of law. *Ibid.*

42. The words "all vacancies," used therein, cannot be rightfully construed to apply to vacancies occurring in a particular way only, but they include a vacancy that arises on the creation of a new office as well as one that happens by the resignation or death of an incumbent. *Ibid.*

43. By section 17 of the act of July 28, 1866, chap. 299, there were allowed in the Medical

Department of the Army one chief medical purveyor and four assistant medical purveyors, each with the rank and pay of a lieutenant-colonel of cavalry; and the sixth section of the act of March 3, 1869, chap. 124, prohibited any new appointments or promotions in that department until otherwise directed by law. A vacancy in the office of chief medical purveyor having occurred subsequent to the date of the last-mentioned act: *Held* that the provisions thereof forbid the filling of the vacancy by the appointment of one of the assistant medical purveyors thereto; that such an appointment would constitute a promotion, in view of the relative superiority of the position, and come within the statute, though it involved no increase of pay. *Opinion of Feb.* 24, 1872, 14 Op. 10.

44. The purpose of the act of June 8, 1872, chap. 351, is to put Nelson H. Davis in the same grade in the Inspector-General's Department, and in the same place relatively in that grade, which he would now hold and occupy had he been regularly promoted to fill the vacancy in that Department caused by the death of Inspector-General Henry Van Rensselaer on the 23d of March, 1864. *Opinion of Sept.* 16, 1872, 14 Op. 117.

45. That purpose will be effected by appointing him to the office of Inspector-General, to take rank next after Colonel Schriver; and this would necessarily make him (as by the statute he is entitled to be) senior in rank to Colonel Hardie. *Ibid.*

46. The claim of Maj. Absalom Baird to fill the vacancy in the Inspector-General's Department caused by the advancement of Lieut. Col. Nelson H. Davis, under the act of June 8, 1872, chap. 351, is inadmissible; the authority to appoint conferred by that act being exhausted by the appointment of the last-named officer, and the filling of the vacancy accordingly being precluded by force of the sixth section of the act of March 3, 1869, chap. 124. *Opinion of Jan.* 9, 1873, 14 Op. 164.

47. Review of the laws and regulations pertaining to appointments and promotions in the military service. *Ibid.*

48. It may now be considered to be definitely settled by the practice of the Government, that the *regulation and government* of the Army include, as being properly within their scope, the regulation of the appointment and promotion of officers therein. *Ibid.*

49. Hence, as the Constitution expressly confers upon Congress authority "to make rules for the government and regulation of" the Army, that body may impose such restrictions and limitations upon the appointing power as it deems proper in regard to promotions or appointments to any and all vacancies in the Army, provided the restrictions and limitations be not incompatible with the exercise of the appointing power. *Ibid.*

50. Previous to the act of July 28, 1866, chap. 299, the Secretary of War, with the approval of the President, might, by virtue of the act of April 24, 1816, chap. 69, at discretion, adopt alterations in the regulations for the Army; and the regulations thus modified had the sanction of Congress under the latter act, so far at least as they came not in conflict with the provisions of any later statute; but by the said act of 1866 this authority of the Executive to alter or modify was taken away. Accordingly, the rules which existed at the date of the act of 1866 concerning the subject of appointment and promotion in the Army became, as it were, fixed; and, having the force of law, they must be taken to control the appointing power in regard to that subject until Congress shall otherwise direct. *Ibid.*

51. Where an officer in a regiment has resigned, or is lawfully dismissed from the service, and his connection with the Army has thus ended, he cannot afterward be legally restored by reappointment to his former grade and position, if he would thereby be made to outrank other officers then already holding commissions in the regiment, unless such reappointment is specially authorized by Congress. *Opinion of Nov.* 20, 1874, 14 Op. 500.

52. The reappointment in the above case is precluded by the Army Regulations, which have the force and effect of law, and which require, as a general rule, all vacancies in the regimental offices to be filled by promotion according to seniority. *Ibid.*

53. H., an assistant quartermaster (whose commission is junior to the commissions of twenty-two other assistant quartermasters), having served as an assistant quartermaster of volunteers from June 9, 1862, to March 22, 1867, and from the latter date as an assistant

quartermaster in the regular Army under his present commission, claimed to be entitled to promotion to the grade of major in the Quartermaster's Department on account of fourteen years' continuous service. An obstacle to immediate promotion being presented by section 4 of the act of March 3, 1875, chap. 126, the question is whether H. is entitled to be promoted upon the next happening of a vacancy in said grade, the provisions of that section not being in the way: *Held* (1) that he is not so entitled on the ground of continuous service; (2) that under existing law the right to promotion, in case of such vacancy, would be governed by seniority of commission, irrespective of the past service of the officer. *Opinion of July* 6, 1877, 15 Op. 330.

54. C. and T., each of whom had previously served as a medical officer in the volunteer forces during the late war, were appointed to fill original vacancies in the grade of assistant surgeon in the Army, created by section 17 of the act of July 28, 1866, chap. 299, the appointment of the latter having been made in May, 1867, and that of the former in October, 1867. *Held* that neither C. nor T. is entitled (in the absence of a statutory provision authorizing it) to have his commission dated as of the date of the act creating the vacancies, viz, July 28, 1866. *Opinion of Sept.* 27, 1878, 16 Op. 614.

55. In applying section 1219 Rev. Stat. to the case of assistant surgeons who are entitled to rank as captains it is not necessary to issue commissions to such assistant surgeons as captains. The *office* to which they are already commissioned is that of assistant surgeon; and promotion therein (from the rank of first lieutenant to that of captain), consequent upon duration of service, results by mere operation of law, and does not require any action by the appointing power to effect it. *Opinion of Jan.* 24, 1880, 16 Op. 652.

56. S., an officer in the Quartermaster's Department, standing number four in the grade of lieutenant-colonel, claims that he was overslaughed by the promotion, in 1866, of the three officers who stand above him in the same grade, under an erroneous execution of the act of July 28, 1866, chap. 299 (whereby certain original vacancies in the grades of major, lieutenant-colonel, and colonel, created by that act, were filled by *selection* instead of by promotion according to seniority), and he asks that the error be now rectified by the President by appointing him to fill the next vacancy occurring in the grade of colonel in the same corps over the three officers referred to. *Advised* that (upon considerations stated in the opinion) the President should treat the commissions issued to these officers by his predecessors as conclusive of their right to the rank conferred thereby; that while those commissions stand he should have regard to them in making promotions by seniority in said corps; and that if S. has sustained a wrong in this matter, Congress alone can remedy it. *Opinion of Dec.* 9, 1880, 16 Op. 583.

III. Brevets.

57. Brevet rank takes effect whenever by special assignment the brevet officer is invested with a separate command, comprising troops of different corps at a particular post. *Opinion of March* 27, 1823, 1 Op. 604.

58. The act of July 6, 1812, chap. 137, authorizing the President to confer brevet rank on such officers of the Army as shall have served ten years in any one grade, applies to brevet officers generally, and such as have been brevetted for gallant services. *Opinion of April* 5, 1824, 1 Op. 653.

59. The service actually rendered for ten years in any one grade being the ground of promotion, any officer performing it for that term, whether he holds the grade by commission or by brevet, is entitled to promotion. *Ibid.*

60. The ten years' service in one grade mentioned in the act of July 6, 1812, chap. 137, as given for one of the meritorious grounds for a brevet (if there be no practice to the contrary) must be a service for ten continuous years. *Opinion of Feb.* 20, 1828, 2 Op. 71.

61. The act authorizing the President to confer brevets is not mandatory; it is not imperative; but merely authorizes him to confer brevet rank in certain cases; and the cases are within his sound discretion to say whether the gallant actions, meritorious conduct, and the service in one grade of ten years have been sufficiently important to deserve the mark of distinction. *Ibid.*

62. The brevet commissions issued by the President on the 28th of June, 1848, to certain persons who had distinguished themselves in the late war with Mexico, on the recommenda-

tion of the commanding officer of their regiment, are valid, though such persons were not non-commissioned officers at that date. *Opinion of Sept.* 4, 1848, 5 Op. 22.

63. The act of March 3, 1847, chap. 61, invested the President with authority to issue such brevets as a reward for the distinguished services of that class of officers, rendered in that capacity, upon certain evidence that they had thus served, whether they should retain the same rank when the reward should be bestowed, or should be transferred elsewhere to act in an humbler capacity. *Ibid.*

64. Under the act of April 16, 1818, chap. 64, an officer of the Army cannot get the pay of his brevet rank without showing both that he was on duty and that he had a corresponding command. *Opinion of Sept.* 29, 1857, 9 Op. 114.

65. Although Congress, by the act of March 3, 1839, chap. 85, declared that the act of April 16, 1818, chap. 64, should thereafter "be so construed as to include the case of the Adjutant-General of the United States," it was held that an officer who, after the passage of the said act of 1839, was Adjutant-General of the United States with the rank of brigadier-general by brevet, and afterward a major-general by brevet, and who had no command according to such ranks, was not entitled to receive the pay and emoluments of his respective brevet ranks. *Ibid.*

66. Where nominations of Army officers for promotion by brevet had been pending before the Senate prior to the date of the act of March 1, 1869, chap. 52, but were not confirmed by that body until the 3d of March, 1869: *Held* that, under the operation of the second section of that act, if the officers were not nominated by reason of "distinguished conduct and public service in the presence of the enemy," they could not be commissioned. *Opinion of April* 24, 1869, 13 Op. 31.

67. A nomination for brevet promotion, by reason of meritorious service in engagements with the Indians, is within the statute, and, consistently with its provisions, commissions might be issued to any of the officers referred to who may have been thus nominated. *Ibid.*

68. Such promotion, when made during the existence of Indian hostilities, is to be viewed as conferred "in time of war," within the meaning of the act mentioned. *Ibid.*

IV. Rank.

69. *Advised* that the construction of the law as given by Judge-Advocate-General Holt, and since acquiesced in and followed in several instances by the War Department, be adhered to, namely: that the rank conferred by section 1096 Rev. Stat. upon the aids selected by the General of the Army thereunder entitles such aids to the precedence, when serving upon courts-martial, courts of inquiry, military boards, and the like, to which the same rank would entitle an officer of the line or staff (independent of the office of aid) when thus serving. *Opinion of Aug.* 11, 1880, 16 Op. 552.

V. Relative Rank.

70. The period of service during which those paymasters in the Army who were selected and appointed pursuant to the provisions of the eighteenth section of the act of July 28, 1866, chap. 299, from the "additional paymasters" created under the twenty-fifth section of the act of July 5, 1838, chap. 162, served as such "additional paymasters," should not be taken into account in determining their relative rank as between themselves and other paymasters in the Army whose commissions are of prior date to theirs. *Opinion of June* 13, 1871, 13 Op. 441.

71. The second proviso to the thirteenth section of the act of March 3, 1847, chap. 61, by which length of service in the Pay Department, and not date of commission therein, was made to determine relative rank among paymasters, has been superseded by the first section of the act of March 2, 1867, chap. 159, which is expressly given a retrospective operation upon all appointments theretofore made under the act of July 28, 1866, chap. 299. *Ibid.*

72. Except as between such as have the same date of appointment and commission, the act of March 2, 1867, chap. 159, leaves the matter of relative rank to be regulated solely according to the dates of the commissions under which those officers are at the time acting. *Ibid.*

73. But where they have the same date of appointment and commission the matter is to be determined by length of service, computed according to the provisions of the last-mentioned act. *Ibid.*

74. The provision in the second clause of paragraph 5, Army Regulations of 1863, for

determining the rank of officers of different regiments or corps whose commissions are of the same date and grade, which reads, "2d. By former rank and service in the Army or Marine Corps," considered and construed. *Opinion of Dec.* 15, 1877, 15 Op. 411.

75. The word "Army," as there employed, is to be understood as embracing the entire military forces of the United States, whether regular or volunteer. The word "service" does not mean service in all capacities, but service in the former rank, *i. e.*, as a commissioned officer. *Ibid.*

76. Accordingly, where the former service of two officers was in different grades (whether in the regular or volunteer army), the one who served in the higher grade is entitled to the superior rank; where both officers hold the same grade, the one who served the longer in that grade is to be preferred. *Ibid.*

77. On the 9th of October, 1867, C. was appointed to fill an original vacancy in the grade of assistant surgeon in the Army, under the provisions of section 17 of the act of July 28, 1866, chap. 299. He accepted the appointment October 14, 1867. Having previously served as a medical officer of volunteers for more than three years, his appointment entitled him under the same provisions to the rank of captain, and he was accordingly noted as of that rank on the Army Register. *Held* that the relative rank of C. with other assistant surgeons in the medical corps must be determined by reference to the *rank* conferred by his appointment (which is that of *captain*) and the date thereof, and not by reference to the date of his appointment as *assistant surgeon*, irrespective of the rank conferred thereby. *Opinion of June* 6, 1878, 16 Op. 605.

78. Opinion of June 6, 1878 (16 Op. 605), in the case of Dr. Archibald B. Campbell, assistant surgeon, referred to, and *held, further*, in same case: (1) That C., who entered the service as assistant surgeon with the rank of captain October 14, 1867, ranks W., who was appointed assistant surgeon and first lieutenant May 14, 1867, and captain May 31, 1870. (2) That under the act of July 28, 1866, chap. 299, an assistant surgeon with the rank of captain takes precedence of every assistant surgeon with rank of captain of later date, and of every assistant surgeon with the rank of first lieutenant, without reference to the date of their entry into service as assistant surgeons. *Opinion of July* 2, 1878, 16 Op. 56.

79. The subject of *rank*, as between those holding the office of assistant surgeon in the Army, and what effect, in determining such rank, is to be given to the former service of assistant surgeons who, previously to their appointment, had served three or more years in the volunteer medical department (all of which is discussed in opinions of June 6 and July 2, 1878, 16 Op. 56, 605), reviewed, and the doctrine of those opinions reaffirmed. *Opinion of Jan.* 24, 1880, 16 Op. 652.

VI. Transfer of Officer.

80. Lieutenants in the artillery and Marine Corps may be exchanged, with their own assent, where the ranks of other officers will not be interfered with or prejudiced; but such exchanges can be effected only by the action of the appointing power of the President, by and with the advice and consent of the Senate; and will not be made unless the good of the service requires it. *Opinion of June* 28, 1830, 2 Op. 355.

81. G., while holding a commission as second lieutenant of infantry, dated March 7, 1867, and being on the list of unassigned officers created under the provisions of the act of March 3, 1869, chap. 124 (which affected infantry regiments and the officers thereof only), received and accepted a commission as second lieutenant in the Fifth Cavalry, to rank from July 14, 1869, the date of his transfer to that regiment, and has since been promoted in ordinary course to a first lieutenancy therein. Before accepting his first commission in the cavalry he remonstrated against the refusal of the War Department to rank him according to the date of his commission in the infantry. *Held* that, on being transferred to the cavalry, G. was not entitled to take rank from the date of his commission in the infantry, but from the date of his transfer, and that the action of the War Department in giving his new commission the latter date was correct; *held, further*, that his commission as an infantry officer was necessarily vacated by his acceptance of a commission in the cavalry. *Opinion of March* 22, 1879, 16 Op. 290.

VII. Resignation.

82. A valid resignation of a military officer, followed by an unconditional acceptance of it, operates to remove the incumbent, and a new appointment is required to restore him to the office. *Opinion of Feb.* 10, 1869, 12 Op. 555.

83. The opinions of Attorney-General Cushing and Attorney-General Bates (see 6 Op. 456, and 10 Op. 229) to the effect that, on general principles of law, the resignation of an officer while insane is to be deemed void, and that, although it may have been accepted without knowledge of the insanity, the acceptance can be recalled and the officer reinstated without a new appointment, reaffirmed; subject, however, to the following qualifications, viz, that the Executive Department, after having accepted the resignation, has done no act which prevents the restoration of the *statu quo* without impairing or prejudicing the rights of other officers acquired in consequence of such act. *Opinion of March* 22, 1878, 15 Op. 470.

84. Where a resignation of an Army officer has been tendered and accepted without anything more, and a question of insanity afterwards arises, it is competent to the War Department to hear and consider evidence upon the question, and decide and act accordingly. *Ibid.*

85. But where, after acceptance of the resignation and without knowledge of the insanity, the place of the officer has been filled by appointment of another thereto, the resignation must be regarded as effective. *Ibid.*

VIII. Holding Civil Office.

86. The provisions of section 18 of the act of July 15, 1870, chap. 294, prohibiting Army officers on the active list from holding any civil office, extend to State offices as well as to offices under the United States, and to those offices for which no compensation is provided as well as to those for which compensation is allowed. *Opinion of Aug.* 10, 1870, 13 Op. 310.

87. In view of the eighteenth section of the act of July 15, 1870, chap. 294: *Held* that General William T. Sherman cannot act as Secretary of War without vacating his commission as General of the Army. *Opinion of March* 24, 1873, 14 Op. 200.

88. The position of trustee of the Cincinnati Southern Railway—the duties which appertain to it being defined by certain acts of the Ohio legislature, and appointments thereto and removals therefrom being made by the judges of the superior court of the city of Cincinnati, by which court the compensation of the trustee is also fixed—is a *civil office* within the meaning of section 1222 Rev. Stat., and, therefore, upon acceptance of an appointment to such trusteeship by an officer of the Army his commission in the Army would become vacated. *Opinion of March* 25, 1876, 15 Op. 551.

89. A retired officer of the Army does not vacate his commission by accepting a civil office, unless it be an office in the diplomatic or consular service, in which latter case he is to be regarded as having resigned his place in the Army. From the general law applicable to such case (contained in section 1223 Rev. Stat.), a certain class of retired officers described in the act of March 3, 1875, chap. 178, are excepted. *Opinion of June* 11, 1877, 15 Op. 306.

90. He is not precluded from holding a civil office that does not belong to the diplomatic or consular service. And when he performs the duties of a civil office which he may lawfully hold, under and by virtue of an appointment to such office, he is entitled to draw his pay as a retired officer and also the salary provided for the civil office during the period of his incumbency of the latter office. *Ibid.*

91. In 1870, B., a retired officer of the Army, was appointed to and accepted the office of consul-general at London. Since his appointment his name has been borne on the Army Register as a retired officer, but he has not received pay as such. He is not of the class of retired officers described in the first proviso of section 2 of the act of March 3, 1875, chap. 178: *Held*, upon consideration of the provisions of sections 1094 and 1223 Rev. Stat. (the latter section embodying so much of section 2, act of March 30, 1868, chap. 38, as related to officers of the Army), together with section 2 of the act of 1875 aforesaid, that B. has ceased to be a retired officer of the Army by effect of the statutory provision embodied in said section 1223, and that his name cannot legally be continued on the retired list. *Opinion of Dec.* 11, 1877, 15 Op. 407.

92. Section 1222 Rev. Stat. does not forbid the detail by the Secretary of War of an officer of the Army on the active list for duty on the Geological Survey, under the Interior Department. But such detail would come within the

prohibition of section 1224 Rev. Stat., should it require the officer to be separated from his company, regiment, or corps, or should it otherwise interfere with the performance of his military duties proper. *Opinion of May* 21, 1880, 16 Op. 499.

IX. Dismissal or Removal of an Officer.

93. A paymaster having been reported by the Paymaster-General to have failed in making quarterly reports according to the act of 31st of January, 1823, chap. 9, and having been dismissed from office by an order from the office of the Adjutant-General, purporting to have been issued by order of the President, and his place having been filled by another, is effectually and legally dismissed from the Army as paymaster, although the President has not issued any order of dismissal under his sign manual. *Opinion of Feb.* 17, 1828, 2 Op. 67.

94. The proviso to the third section of the act of 31st of January, 1823, chap. 9, concerning restorations in certain cases, does not reach the case of an officer who has been actually dismissed, but is confined to those who, being in default, shall, before their dismission, account therefor to the satisfaction of the President. *Ibid.*

95. The President may cause a military or naval officer to be stricken from the rolls without a trial by a court-martial, notwithstanding a decision in his favor by a court of inquiry ordered for the investigation of his conduct. *Opinion of Feb.* 11, 1842, 4 Op. 1.

96. An officer in default cannot save himself from dismissal by rendering quarterly accounts. He is required not only to account, but to pay, and a default in either subjects him to dismissal. The decision of the President in such cases is final. *Opinion of April* 8, 1850, 5 Op. 234.

97. Military storekeepers are subject to removal from office at the discretion of the President of the United States. *Opinion of March* 26, 1853, 6 Op. 4.

98. The President of the United States possesses constitutional power to dismiss officers of the Army or Navy coextensive with his power to dismiss executive or administrative officers in the civil service of the Government. *Opinion of Dec.* 10, 1856, 8 Op. 223.

99. In the case of Colonel Belger: *Held* that that officer was effectually dismissed from the military service by the general order issued from the Adjutant-General's office on November 30, 1863. *Opinion of June* 16, 1868, 12 Op. 421.

100. *Semble* that section 17, act of July 17, 1862, chap. 200, in so far as it authorized dismissals by the President from the military service, was declaratory only of long-established law, and that the force of the provision is found in the word "requested," by which it was intended to re-enforce strongly this power in the hands of the President at a great crisis. *Opinion of Jan.* 8, 1878, 15 Op. 421.

101. In January, 1863, M., then colonel of a regiment of Wisconsin volunteers in the military service of the United States, was by order of the President dismissed the service without trial. In October, 1863, the President issued the following instructions: "Let the order dismissing Colonel M. be revoked, and he ordered to report to General Grant, as above advised, with the modification that the ordering a court-martial be in the discretion of General Grant." In November, 1863, these instructions were returned to the President by the Secretary of War with the information that the restoration of M. to the command of the regiment, his successor having already been appointed and mustered in, was impracticable; and the President took no further action in the case: *Advised* that it is not now competent to the Secretary of War to publish the said instructions of the President, and, in execution thereof, to grant M. an honorable discharge as of the date of the muster-in of his successor. *Opinion of Feb.* 12, 1878, 15 Op. 659.

102. H., a major of infantry, was dismissed from the Army, without trial by court-martial, in July, 1863, by order of the President. In April, 1878, he made application for trial by court-martial under the provisions of section 1230 Rev. Stat. *Held* that the phrase in that section, "any officer dismissed," is prospective only in its meaning, and that H. is not entitled to a court-martial. *Opinion of May* 29, 1878, 16 Op. 599.

X. Restoration of Lost Rank.

103. The President, by and with the advice and consent of the Senate, may, by reappointment and commission, restore lost rank, in-

cluding seniority, to an officer of the Army or Navy. *Opinion of Dec.* 10, 1856, 8 Op. 223.

XI. Allowances to Officers.

104. The act of April 24, 1816, chap. 69, authorizing certain charges for forage for horses, and also for pay, rations, and clothing for servants, to be made by certain officers, is prospective in its operation, and refers only to the act of 3d March, 1813, chap. 52, for a standard to govern the subject in future. *Opinion of April* 30, 1821, 1 Op. 468.

105. The allowance of fuel and quarters to officers of the Army is founded on a regulation of the Department of War, sanctioned by an appropriation by Congress. The Surgeon-General is entitled to the same allowance. *Opinion of June* 30, 1821, 1 Op. 475.

106. A judge-advocate is entitled to compensation for extra expenses in traveling and sitting as judge-advocate, and to special compensation for clerical services, under the twenty-first and twenty-second sections of the act of 16th March, 1802, chap. 9. *Opinion of Aug.* 20, 1823, 1 Op. 618.

107. The per diem allowance made to officers for traveling expenses by section 22 of the act of 16th March, 1802, chap. 9, is confined to officers traveling to and from courts-martial, and cannot be paid to those who are traveling on other business. *Opinion of March* 23, 1825, 1 Op. 708.

108. A lieutenant, being a subaltern in the Army, and not in the performance of any staff duty, is entitled, by the act of 2d March, 1827, chap. 42, to an additional ration. *Opinion of June* 30, 1829, 2 Op. 213.

109. Extra rations are properly issuable to officers commanding at posts, in the ordinary military acceptation of that term, and to those to whom, by special order of the President, they have been or may be directed to be issued. *Opinion of July* 18, 1829, 2 Op. 223.

110. Both the Surgeon-General and Paymaster-General are entitled equally to allowances for fuel and quarters. *Ibid.*

111. A general officer of the Army cannot draw a back allowance for fuel and quarters, where, during the time for which he seeks such allowance, he received double rations in lieu thereof. *Opinion of Dec.* 4, 1829, 2 Op. 303.

112. Lieutenants in the receipt of extra pay for staff duties are not entitled to the additional ration allowed by the act of March 2, 1827, chap. 42. They are entitled to only three rations per day when in the performance of ordinary duties, and six when in command of a post, with a right to double rations. *Opinion of April* 17, 1834, 2 Op. 638.

113. Officers of the Army acting as Indian agents, who shall be employed in the removal of Indians, may, notwithstanding the act of March 3, 1835, chap. 26, be allowed their actual traveling expenses. *Opinion of March* 7, 1835, 2 Op. 702.

114. Certain acts of Congress, when construed together, authorize the continuance of allowances for quarters, fuel, and transportation, agreeably to estimates and the former usage. *Ibid.*

115. The practice of commuting for quarters and fuel is only a particular mode of ascertaining the amount of the proper allowances for these objects, adopted from a regard to convenience and economy; and, as it is still authorized by law, there is no objection to the continuance of this method of settling it. *Ibid.*

116. The extra compensation and allowances given by the regulations in force at the time of the passage of the act of the 3d of March, 1835, chap. 26, were authorized by law. *Opinion of April* 16, 1836, 3 Op. 84.

117. The eighth section of the act of 2d March, 1821, chap. 13, was enacted as a permanent provision; and, as it has never been repealed nor abrogated, is yet in force. *Ibid.*

118. The payment of Army contingencies is authorized by law; and, as Congress has not defined in the law itself what those contingencies are, the Secretary of War must be admitted to possess a very liberal discretion on the subject. *Ibid.*

119. If allowances made by the Secretary of War prior to the 3d March, 1835, to officers of the Army, from the appropriation for Army contingencies, were really for contingencies, they were authorized by law. *Ibid.*

120. The fifth section of the act of 4th July, 1836, chap. 356, does not include the double rations heretofore allowed by the regulations. The word "compensation" is synonymous with "pay," and does not include rations. *Opinion of Oct.* 24, 1836, 3 Op. 152.

121. Regimental quartermasters of the dra-

goons, artillery, infantry, and riflemen, respectively, are entitled to forage for two horses, by section 4 of the act of 11th February, 1847, chap. 8. *Opinion of Oct.* 27, 1851, 5 Op. 406.

122. An officer on the duty of awaiting further orders is to be regarded as under orders, in the line of duty, and is entitled to commutation for quarters and fuel under the general Army regulations. *Opinion of July* 27, 1859, 9 Op. 376.

123. The War Department erred in disallowing the claim of Colonel Gates for servants and forage for the months of August, September, October, and November, 1861, under the twentieth section of the act of August 3, 1861, chap. 42. *Opinion of Aug.* 26, 1864, 11 Op. 70.

124. Under the act of July 15, 1870, chap. 294, the allowance to officers in the Army of fuel and quarters in kind for their servants is still authorized to be made. *Opinion of May* 6, 1871, 13 Op. 417.

125. The same act, however, does not authorize transportation in kind for such servants to be furnished at the expense of the United States, or reimbursement in money to the officers for the cost thereof. *Ibid.*

126. An officer of the Army, while on leave of absence from his command, in October, 1870, was ordered to serve and did serve on a court-martial; and the court, having adjourned *sine die* before the expiration of his leave, he immediately returned to his command: *Held*, first, that the officer is not entitled to *per diem* compensation for his service on the court-martial, such allowance being prohibited by the act of July 15, 1870, chap. 294; and, second, that he is not entitled to mileage from the place where the court met to the place where his command was stationed, as at the time he was not "an officer traveling under orders," and not within the provisions of the twenty-fourth section of that act allowing mileage. *Opinion of Sept.* 9, 1871, 13 Op. 526.

127. Paragraph 900 of the Army Regulations of 1863 applies to officers who, at the adjournment of the court, should be at post or duty but for the engagement at court, and not to officers who, for the time being (as is the case with officers on leave), have no such post or duty. *Ibid.*

128. The additional allowances for subsistence provided for by section 4688 Rev. Stat. can legally be made to officers of the Army or Navy while employed on coast-survey service. Such allowances are not within the prohibition made by the final clause of section 4684 Rev. Stat. *Opinion of May* 23, 1877, 15 Op. 283.

129. A military post or station, where there are public quarters for officers, but such quarters are insufficient for the accommodation of all the officers there, is, in regard to those officers who are necessarily excluded from the public quarters, a place where there are no "public quarters" within the meaning of the proviso in section 9 of said act, and commutation for quarters may be allowed to the officers thus excluded. *Opinion of Aug.* 7, 1878, 16 Op. 611.

130. The act of July 29, 1876, chap. 239, taken in connection with section 24 of the act of July 15, 1870, chap. 294, continued to Army officers on leave of absence (during the period for which such leave may be granted to them thereunder "without deduction of pay or allowance") *quarters in kind*, but it did not authorize an allowance of commutation therefor. *Opinion of Jan.* 16, 1879, 16 Op. 619.

131. Where commutation for quarters is allowable to Army officers under section 9 of the act of June 18, 1878, chap. 263, it may include commutation for quarters for their servants, agreeably to the existing Army regulations. *Ibid.*

132. Where an officer of the Army, to whom leave of absence "without deduction of pay or allowance" has been granted under the act of July 29, 1876, chap. 239, is at the time he takes his leave entitled to an allowance of commutation for quarters under section 9 of the act of June 18, 1878, chap. 263, such allowance is, by force of the former act, continued to him whilst he is absent on leave for a period not exceeding that for which the leave was granted thereunder. Opinion of January 16, 1879 (16 Op. 619), explained. *Opinion of Nov.* 15, 1880, 16 Op. 577.

XII. Pay Accounts of Officers.

133. The Secretary of War may properly issue an order authorizing paymasters of the Army to make a certificate upon the pay accounts of officers in the following form: "The within account is believed to be correct, and would be paid by me if I had public funds available for that purpose." Such certificate would not come under the prohibition of sec-

tion 3679 Rev. Stat. *Opinion of May* 17, 1877, 15 Op. 271.

134. Section 3477 Rev. Stat. does not forbid the transfer or assignment of their pay accounts by Army officers after the same become due. Such accounts may be lawfully transferred or assigned when due, the regulations of the Army relating to this subject (par. 1349, Art. XLV, Regulations of 1863) being complied with. *Ibid.*

XIII. Longevity.

135. The phrase "during the war of the rebellion," in section 7 of the act of June 18, 1878, chap. 263, is a limitation upon the provisions thereof only with respect to officers of the Army who have served as *officers* in the volunteer forces. It does not apply to those officers of the Army who have served as *enlisted men* in either the volunteer or regular forces. Hence, in computing the service of officers of the latter description for longevity-pay and retirement, service performed by them as enlisted men previous to the war of the rebellion must be taken into account. *Opinion of Aug.* 7, 1878, 16 Op. 611.

136. Cadets at the Military Academy at West Point are not "enlisted men" within the meaning of that section. *Ibid.*

XIV. Examining Board.

137. Section 17 of the act of August 3, 1861, chap. 42, does not authorize the Secretary of War or the Secretary of the Navy to assemble a mixed board of Army and Marine officers for inquiry into the cases of disabled officers of the Army and of the Marine Corps. *Opinion of Sept.* 13, 1861, 10 Op. 116.

138. The proceedings of a board constituted without authority and in violation of that act would be open to future question as to their validity. *Ibid.*

XV. Retired List.

139. A retired officer of the Army is not entitled to the full pay and emoluments of his grade whilst not assigned to duty. *Opinion of July* 9, 1866, 11 Op. 524.

140. An officer of the Army retired under the thirty-second section of the act of July 28, 1866, chap. 299, is entitled to the full pay and allowances of the rank upon which he is retired when assigned to duty. *Opinion of April* 14, 1868, 12 Op. 382.

141. Army officers who have been retired from active service by the President under the twelfth section of the act of July 17, 1862, chap. 200, cannot be reinstated on the active list, except by a new appointment with the advice and consent of the Senate, and where vacancies on the active list exist which may lawfully be filled. *Opinion of June* 14, 1869, 13 Op. 99.

142. Such officers can, however, under that section, be assigned by the President to any appropriate duty in any department of the service, and while so assigned and employed they will be entitled to the full pay and emoluments of their respective grades. *Ibid.*

143. An officer of the Army, who has been retired from active service in accordance with law, cannot be reinstated in his former place by an order of the President, though the vacancy caused by his retirement may not have been filled. *Opinion of Feb.* 5, 1870, 13 Op. 209.

144. The claim of General Schuyler Hamilton to be placed on the retired list of the Army, based on his appointment to the staff of Brevet Lieutenant-General Scott as a military secretary, is inadmissible under the laws in force, he not being now an officer on the active list by virtue of that appointment. *Opinion of Nov.* 28, 1874, 14 Op. 506.

145. The proviso in section 2 of the act of March 3, 1875, chap. 178, namely, "That no part of the foregoing act shall apply to those officers" [*i. e.*, officers of the Army theretofore retired by reason of disability arising from wounds received in action] "who * * * has an arm or leg permanently disabled by reason of resection, on account of wounds," &c., construed. *Opinion of March* 22, 1876, 15 Op. 83.

146. The word "resection" is a surgical term, signifying the removal by excision of dead or diseased bone—more especially the removal of such bone, in that way, from the articular extremities or the unconsolidated extremities of fractured bones. *Ibid.*

147. In order to bring a case within the terms of so much of the proviso as is above quoted the essential circumstances required are: (1) a previous wound, causing some portion of the bone to become diseased or dead; (2) thereby necessitating a cutting off and removal of the dead or diseased part, which is accomplished; (3)

whereby the limb is permanently disabled. *Ibid.*

148. It is sufficient if the disability is in part approximately attributable to the resection, though this be proportionately less than what is due to other contributory causes. *Ibid.*

149. Where an officer was permanently disabled of a limb mainly from the effects of a wound received in battle, and a doubt exists whether part of the disability, at least, was not caused by a resection on account of the wound: *Held* that the officer is entitled to the benefit of the doubt, upon the ground that the law of 1875, operating as it does to take away rights previously granted by law, should not be made to affect those as to whom its application is doubtful. *Ibid.*

150. A partial resection of an arm or leg on account of wounds received in battle, where the operation is followed by permanent disability of the limb, and the disability is partly owing to such operation, suffices to bring a case within the proviso of the second section of the act of March 3, 1875, chap. 178. *Opinion of Feb.* 13, 1877, 15 Op. 199.

151. The words "every such officer," as used in the first proviso of section 2 of the act of March 3, 1875, chap. 178, cover all retired officers who are included within the preceding part of the same proviso, but do not apply to others. *Opinion of Dec.* 11, 1877, 15 Op. 407.

152. The officers who were placed upon the retired list of the Army under the authority given by the acts of May 10, 1872, chap. 153; March 3, 1875, chap. 187; and June 26, 1876, chap. 144, are to be enumerated as a part of the three hundred to which, by section 1258 Rev. Stat., the number upon the retired list is limited. *Opinion of June* 1, 1878, 16 Op. 26.

153. The act of March 3, 1879, chap. 201, authorized the President "to reinstate Maj. Joseph B. Collins, late of the United States Army, and to retire him in that grade as of the date he was previously mustered out, charging him with all extra pay and allowances paid him at that time." *Held*, first, that under that enactment the proper mode of reinstating Major Collins is by an appointment after nomination to and confirmation by the Senate (but see, *contra*, the NOTE in 16 Op. 626); second, that upon reinstatement in the retired service he becomes entitled to pay, by virtue of the same enactment, from the date when he was previously mustered out. *Opinion of April* 10, 1879, 16 Op. 624.

XVI. Enlistment.

154. Until the passage of an act by Congress authorizing the enlistment of aliens into the military service of the United States, such enlistments must be regarded as invalid. *Opinion of Oct.* 22, 1841, 3 Op. 671.

155. By section 16 of the act of July 5, 1838, chap. 162, and the act of May 13, 1846, chap. 17, all enlistments in the regular Army are required to be for the term of five years; and no discretion has been conferred to contract for such service either conditionally or for a shorter term. *Opinion of Nov.* 24, 1846, 4 Op. 537.

156. It is the settled policy of the Government to encourage re-enlistments; and where under the act of 3d of March, 1847, chap. 61, soldiers have received certificates of merit which entitle them to additional pay of $2 per month, such pay does not cease at the expiration of the term during which they received the certificates, but continues through successive enlistments. *Opinion of Oct.* 10, 1851, 5 Op. 400.

157. Soldiers who re-enlist in the Army within two months before or one month after the expiration of the term are entitled to the bounty provided by the act of July 5, 1838, chap. 162, and also to that provided by the act of June 17, 1850, chap. 20, where the re-enlistment takes place in the vicinity of the military posts on the Western frontier and at remote stations. *Opinion of Oct.* 25, 1853, 6 Op. 187.

158. Enlistments into the Army made under the inducements held out by the laws of the United States are contracts; and although the Government be a party, still the contracts ought to be construed according to those well-established principles which regulate contracts generally. *Ibid.*

159. Officers of the Army employed in recruiting may lawfully enlist persons not naturalized as citizens of the United States. *Opinion of May* 30, 1854, 6 Op. 474.

160. Prior to the act of May 15, 1872, chap. 162, the law as to the enlistment of minors in the Army stood thus: 1. Minors above the age of eighteen might lawfully be enlisted without the consent of parents or guardians. 2.

They might lawfully be mustered into service between the ages of sixteen and eighteen *with* the consent of parents or guardians. 3. They could not be mustered into service under the age of sixteen. 4. The oath of enlistment was conclusive as to the age of the recruit. *Opinion of April* 5, 1873, 14 Op. 210.

161. That act only so far modified the previous law as to prohibit the enlistment of persons under the age of twenty-one, who have parents or guardians entitled to their custody and control, without the written consent of such parents or guardians, leaving in full force the provision making the oath of enlistment conclusive as to the age of the recruit. *Ibid.*

162. However, in executing the provisions of the twentieth section of the act of February 24, 1864, chap. 13, and the fifth section of the act of July 4, 1864, chap. 237, the Secretary of War, upon whom that duty devolves, is not concluded by the oath of enlistment on the question of age. *Ibid.*

163. *Semble* that where a recruit, in taking the oath of enlistment, "knowingly and willingly" swears falsely, he is indictable for perjury under the thirteenth section of the act of March 3, 1825, chap. 65. *Ibid.*

164. Enlistments are required to be "for the term of five years." By his engagement the soldier is bound for a *specific term* of service, the last day of which is as much fixed by the contract as the first. With the last day of the term his engagement expires, and with the expiration of his engagement the obligation to serve thereby imposed is at an end. This results notwithstanding there has been an infraction of the contract by desertion or otherwise, unless the soldier, before the term is up, consents to an extension. *Opinion of Sept.* 1, 1876, 15 Op. 152.

165. The provision in the forty-eighth article of war, that a deserter "shall be liable to serve for such period as shall, with the time he may have served previous to his desertion, amount to the full term of his enlistment," is a penal provision. It does not, by its own force simply, work a prolongation of the term originally contracted. It operates only after a conviction. *Ibid.*

166. The Secretary of War can release a soldier from his contract of enlistment by a discharge, but has no power to suspend it, even with the soldier's consent. *Opinion of Sept.* 4, 1877, 15 Op. 362.

167. The men composing a certain volunteer regiment had, in December, 1863, been enlisted "for three years or during the war." In June, 1865, the regiment was ordered to New Mexico to quell an Indian outbreak, and while *en route*, during that and the following month, about two hundred of the men deserted, and did not return. In connection with these facts the following questions have arisen: 1, whether the retention of the regiment in service until March, 1866, was legal; 2, whether or not, under the terms of their enlistment, the men could be ordered to quell the outbreak mentioned; 3, whether or not the men who deserted committed, in point of law, the offense of desertion. Upon consideration: *Held* (1) that the term of service of the said regiment covered the months of June and July, 1865, and its retention in service until March, 1866, was legal, the war not having ended until August 20, 1866; (2) that the point at which, and the forces against which, the regiment might be called upon to serve during the war were matters exclusively for the political and military authorities of the Government to pass upon, and hence the order sending the regiment to New Mexico to quell the Indian outbreak was legal; (3) that the men who deserted as aforesaid thereby committed in point of law the offense of desertion. *Opinion of May* 6, 1880, 16 Op. 675.

XVII. Minors.

168. The enlistment of minors over eighteen years of age into the military service, without the consent of parents or guardians, having been authorized by the act of 10th December, 1814, chap. 10, which repealed so much of the fifth section of the act of 20th January, 1813, chap. 12, as required the previous consent in writing of parents, guardians, or masters, &c., the Secretary of War is not required to discharge minors who at the time of enlistment had no parents or guardians. *Opinion of March* 28, 1851, 5 Op. 313.

169. In order to effect the discharge of minors who, having parents or guardians, enlisted without their consent, it is necessary that such parents or guardians concur in the application. Therefore, minors having par-

ents or guardians and enlisting without their consent are not entitled during their minority to make proof and claim their own discharge. *Ibid.*

170. The Secretary of War is not under obligation by law to discharge minors from the Army on the application of alleged parents or guardians not domiciled in the United States. *Opinion of July* 19, 1854, 6 Op. 607.

171. If a minor enlist in the Army without the consent of his parent, guardian, or master, an application of one or other for his discharge cannot be successfully resisted under existing laws. *Opinion of Oct.* 16, 1861, 10 Op. 146.

XVIII. Stoppage of Pay.

172. The amount of the reward paid for the apprehension of a deserter who upon trial by a court-martial for desertion has been convicted only of the offense of absence without leave cannot lawfully be stopped against his pay in a case where the sentence of the court does not impose such stoppage. *Opinion of March* 24, 1880, 16 Op. 475.

173. Under paragraph 160, Army Regulations, to warrant the stoppage there must be either a conviction of the offense of *desertion* or a restoration to duty without trial on conditions involving the stoppage. A conviction of the offense of *absence without leave* is not sufficient. *Ibid.*

174. Stoppage of pay against a soldier is unauthorized unless made in execution of the sentence of a court-martial, or in pursuance of a statute, or in conformity to the Regulations of the Army, which have the force of law. *Ibid.*

XIX. Money of Enlisted Persons.

175. There is no regulation, or statute, or principle of law, which renders forfeitable to the United States moneys belonging to soldiers found in their possession at the time of enlistment, and taken from them under a general order issued as a military police measure. *Opinion of Feb.* 8, 1870, 13 Op. 210.

176. Such moneys taken from enlisted men who are entered on the muster-rolls as deserters, but have never been convicted of desertion, are not payable to the Board of Managers of the National Asylum for Disabled Volunteer Soldiers as moneys forfeited on account of desertion. *Ibid.*

177. By enlisting or drafting a soldier the United States acquire no right over his property not accruing to him in consideration of his enlistment or military service, and cannot rightfully deprive him of it permanently except as a punishment for crime. *Ibid.*

178. The right to take money or other property from his possession while in the service which would be likely to interfere with the requirements of discipline is entirely different in principle from the right wholly to divest him of it. *Ibid.*

179. Certain enlisted persons, having received bounty-money from the localities to which they were credited, delivered the same to the recruiting officer in compliance with a regulation of the service, and subsequently, on their arrival at the regimental depot, they underwent a re-examination, were rejected on account of disabilities existing prior to their enlistment, and were discharged; afterwards, in pursuance of a general order, the money was deposited by the officer in the Treasury to the credit of an appropriation under the control of the War Department. Claim being now made for the money: *Held* that the Department cannot lawfully retain it, after deducting therefrom any sums due the United States from the persons referred to. *Opinion of June* 7, 1870, 13 Op. 257.

XX. Furlough.

180. An order which relieves a soldier from duty in his company, but requires him to immediately report for duty in another branch of the military service, is not a furlough (though it be so styled in the order), but is essentially a detail for other duty, and must be treated as such. *Opinion of Sept.* 4, 1877, 15 Op. 362.

XXI. Discharge.

181. Regularly, an officer or soldier, upon his discharge from the military service, is entitled to an honorable discharge, unless he is under

sentence of dishonorable dismissal, or unless he has been convicted of an infamous offense and is sentenced to punishment therefor during the remainder of his term of service, or of conduct reflecting upon his military career, such as cowardice, &c., with either of which conditions an honorable discharge would be incompatible. *Opinion of April* 10, 1869, 13 Op. 16.

182. Where an honorable discharge from the military service has in fact been received, and was given by competent authority, the subsequent cancellation of the discharge certificate, which is only evidence of such discharge, cannot avoid the latter, nor make it capable of modification to the prejudice of the person discharged. *Ibid.*

183. The War Department has power to correct mistakes made in granting discharges to soldiers. *Opinion of Jan.* 19,1870, 13 Op. 201.

184. A party having enlisted as a volunteer soldier in the year 1863, was, on the 18th of January, 1866, before the expiration of his term of enlistment, mustered out of service with his company at Fortress Monroe, Va., but was not paid off, nor was his discharge certificate delivered to him until he reached Augusta, Me., on the 25th of January, 1866, to which latter place he had been transported with his company under the orders and control of the military authorities: *Held* that he was not discharged from the service within the meaning of section 2 of the act of August 4, 1854, chap. 247, until the 25th of January. *Opinion of July* 6, 1870, 13 Op. 278.

185. The "muster-out" of a volunteer soldier cannot be viewed as in itself or by itself a discharge from service; and he is not to be regarded as discharged until he is released from military control and from subjection to the orders of his superior officers. *Ibid.*

186. The act of July 15, 1870, chap. 294, authorized any officer to be reported under its provisions as unfit for the proper discharge of his duties, either by the *General* of the Army, or by the *commandant of the department* in which the officer was at the time serving; and it was within the competency of the board constituted under that act, in either case, to entertain and pass upon the report so made. Any officer so reported was legally before the board, and was legally mustered out of the service by the President upon the board's recommendation. *Opinion of April* 15, 1871, 13 Op. 412.

XXII. Regulations.

187. The regulations of the Army have the force and effect of law so far as they are consistent with the statutes. Those at present in force (regulations of 1863) have been adopted by the act of July 28, 1866, chap. 299, which provided (section 37) that the then existing regulations should remain in force until further action by Congress. *Opinion of June* 8, 1878, 16 Op. 38.

XXIII. Civil Authorities.

188. Although the subordination of the military to the civil authorities of the country is an axiom of our Government, it was never intended to place the military entirely at the mercy of any individual who might choose to call for their surrender. *Opinion of Oct.* 5, 1825, 2 Op. 11.

189. If this were the case, the military operations of the Government might be weakened, impeded, or obstructed whenever an individual, from private resentment, political intrigue, or worse motives, should choose to interfere with their operations. *Ibid.*

190. As it rests in the discretion of the President in what cases he will exercise his military authority to constrain those composing the Army to surrender themselves to the civil authority of the States, it would seem proper to adopt by analogy the principle of the Constitution relative to the surrender of fugitives by the governors of the States, applying the details of the act of Congress of the 12th of February, 1793, chap. 7, respecting fugitives from justice. *Ibid.*

191. Where a demand by a civil magistrate stated that certain officers, naming them, "are charged on oath before me with having violated the known laws of the land, and especially of the State of New Jersey," &c.: *Held* that such a demand was not sufficiently specific, and ought not to be acceded to, under the thirty-third article of the rules and articles of war established by the act of April 10, 1806, chap. 20. *Ibid.*

ARMS FOR THE MILITIA.

See MILITIA AND VOLUNTEERS, III.

ARREST.

See also PROCESS; DIPLOMATIC AND CONSULAR OFFICERS.

1. The arrest of the domestic servant of a public minister is declared illegal by the act of April 30, 1790, chap. 9; all process for the purpose is annulled, and the persons concerned in any such process made liable to fine and imprisonment. But if the domestic be a citizen or inhabitant of the United States, and shall have contracted, prior to his entering into the service of the minister, debts still unpaid, he shall not take the benefit of the act, nor shall any person be proceeded against under the act for such arrest unless the name of the domestic be registered in the Secretary of State's office, and transmitted to the marshal of the district in which Congress shall reside. *Opinion of June* 26, 1792, 1 Op. 27.

2. The entering a public minister's house to serve an execution will either be absorbed in the arrest, as being necessarily associated with it, if that should be found criminal; or, if the arrest be admissible under the said act, such entering must be punished, if at all, under the law of nations, as being left untouched by the act. *Ibid.*

3. Arrest for trial is a proceeding belonging to the judiciary, not to the executive branch of the Government, and the warrant of arrest must be founded on information on oath. *Opinion of Sept.* 8, 1818, 1 Op. 229.

4. The President cannot order an arrest either by proclamation or by instructions to marshals, as such proclamation or instructions would be, in effect, a warrant to arrest, and a violation of the sixth article of the amendments of the Constitution. But he may issue his proclamation against an offender who has once been regularly arrested and has made his escape; for the regularity of the arrest implies that the probable cause has been furnished on oath or affirmation according to the requirement of the Constitution, and that the warrant of arrest has been duly issued and has had its effect. *Ibid.*

5. Every citizen of the United States is secured by the Constitution againt an unreasonable arrest; and, to provide against the same, magistrates are forbidden to issue warrants except upon probable cause, supported by oath or affirmation. *Opinion of Sept.* 10, 1829, 2 Op. 267.

6. The communication of the British minister charging that a master of an American vessel had murdered a British subject on the high seas, together with copies of depositions taken before a justice of the peace of the island of Antigua, are not evidence sufficient to authorize the President to order the arrest of the accused and his confinement for trial. *Ibid.*

7. A judge of the Supreme Court residing in the fifth district, or a district judge of one of the districts of Virginia, may issue a warrant to arrest R. B. Randolph for the assault committed by him in the District of Columbia on the President of the United States, the said Randolph being in Virginia. *Opinion of May* 14, 1833, 2 Op. 564.

8. The power to arrest for any offense against the United States is given by the act of Congress in general terms; and so far as respects a judge or justice of the United States, it is not confined to his district or circuit, but his warrant will run throughout the United States. *Ibid.*

9. Midshipmen are not exempt from arrest. Though they are officers and not commissioned, yet they are not "non-commissioned officers" within the usual and technical signification of that phrase; nor are they "enlisted into the service;" and a proper construction of the act of 11th July, 1798, chap. 72, for the organization of the Marine Corps, fails to include them in the exemptions made. *Opinion of May* 16, 1836, 3 Op. 119.

10. In a time of great and dangerous insurrection the President has the lawful discretionary power to arrest and hold in custody persons known to have criminal intercourse with the insurgents, or persons against whom there is probable cause for suspicion of such criminal complicity. *Opinion of July* 5, 1861, 10 Op. 74.

11. In such a case of arrest the President is justified in refusing to obey a writ of *habeas corpus* issued by a court or judge requiring him or his agent to produce the body of the prisoner and show the cause of his capture and detention, to be adjudged and disposed of by such court or judge. *Ibid.*

ASSIGNMENT.

See also CLAIMS, XX; CONTRACT, V; PATENTS FOR INVENTIONS, VIII.

Where the attorney of a stockholder in the Maryland and New York Iron and Coal Company had assigned all his interest therein to the Government some time previous to the delivery of a certificate to another, it is not decided but that, notwithstanding the defects in the transaction, equity would protect the transfer made to the Government. *Opinion of Dec.* 12, 1842, 4 Op. 134.

ATTACHMENT.

1. The Treasurer of the United States is not subject to execution against his person, goods, or chattels, nor to any other process, as against a garnishee under the laws of Maryland. Where such process shall have issued, the district attorney may be instructed to move to dismiss it. *Opinion of April* 4, 1823, 1 Op. 605.

2. Payment of the mariners in Norfolk, by the purser of the United States ship Constitution, should be made notwithstanding the attachment issued for their wages. *Opinion of Nov.* 29, 1841, 3 Op. 718.

3. Money due to an employé of the Government cannot be attached, by the process of a State court, in the hands of a disbursing officer. *Opinion of Sept.* 13, 1861, 10 Op. 120.

4. An attachment issued by a State court against money due a contractor with the Post-Office Department, in the hands of a postmaster, should not prevent the latter from paying the contractor in accordance with the directions given by the Department. *Opinion of Jan.* 7, 1872, 13 Op. 567.

5. It is settled that money in the hands of a disbursing agent of the Government is not subject to attachment at the suit of creditors of the parties to whom such money is due. *Ibid.*

6. Personal property situated within the limits of a national cemetery, and belonging to a contractor with the Government, may be attached on mesne process issued by a court of the State, if in the cession of jurisdiction by the State over the land of the cemetery, or in the consent of the State to its purchase by the United States, there was a reservation of the right to serve civil process on said land. *Opinion of July* 29, 1874, 14 Op. 427.

ATTORNEY-GENERAL.

1. The Attorney-General cannot act as an arbitrator between the Government and an individual, and therefore can render no *award* in the sense in which this phrase is generally understood. *Opinion of Jan.* 23, 1818. 1 Op. 209.

2. He is not authorized to give an official opinion in any case except on the call of the President or some one of the heads of Departments. *Opinion of June* 12, 1818, 1 Op. 211.

3. Subordinate officers of the Government who desire an official opinion of the Attorney-General must seek it through the head of the Department to which they are accountable. *Ibid.*

4. It is the duty of the Attorney-General to give his advice on questions of law only where required by the President and heads of Departments; not to investigate the truth of any allegation of a fraudulent collusion to obtain money from the Treasury. *Opinion of Dec.* 22, 1818, 1 Op. 253.

5. It is not his duty to give an official opinion to the House of Representatives. *Opinion of Feb.* 3, 1820, 1 Op. 335.

6. The Attorney-General does not perceive that it is his official duty to conduct a suit in the Supreme Court brought by a private citizen against the Sergeant-at-Arms of the House of Representatives. *Opinion of Feb.* 3, 1820, 5 Op. 720.

7. It is his duty to give opinions on questions of law; he has nothing to do with the settlement of controverted questions of fact. *Opinion of April* 3, 1820, 1 Op. 346.

8. It is not his duty to give an opinion concerning infringements of the rights of patentees by dealers in the patented articles of manufacture; it not being required of the officers in charge of the Patent Office to decide upon the legal effect of patents issued in conformity to the laws, nor to inform patentees of their rights. *Opinion of Nov.* 5, 1822, 1 Op. 575.

9. Nor to instruct district attorneys in the discharge of their duties; nor to draw pleas at the request of the heads of Departments; nor

ate the course to be pursued in particu-
s depending in the district and circuit
nor to interfere at all with suits until
ach the Supreme Court. *Opinion of*
, 1823, 1 Op. 608.

or to give opinions on questions in
the United States have no interest.
of Jan. 19, 1830, 2 Op. 311.

or to express an opinion to Congress as
power to review the sentence of a gen-
rt-martial. *Opinion of Feb.* 1, 1832, 2

or to give opinions except in cases that
ıin the scope of his duties as marked
aw. *Opinion of July* 23, 1832, 2 Op.

or to revise the decision of an Execu-
partment deliberately made and en-
tisfactory to the Secretary thereof; nor
give opinions at the instance of parties
ıo further action is to be had in the
s. *Opinion of Feb.* 12, 1836, 3 Op. 39.

e has no authority to settle questions
ıor to give advice on questions of law,
ɔr the assistance of the officer calling
pinion on points stated. He takes the
they are stated to him, and predicates
ion thereon. *Opinion of March* 10,
Op. 309.

he Attorney-General having no power
ın official opinion at the request of the
a Department, except on matters that
the official powers and duties thereof,
ons given by him in respect to claims
he Cherokee treaty have been extra-
nd unauthorized. *Opinion of Aug.* 27,
Op. 368.

lthough the acts prescribing the duties
neys-General do not declare the effect
advice, it has been the practice of the
ients to heed it. It has been found
ıdvantageous, if not absolutely neces-
have uniformity of action upon analo-
estions and cases; and that result is
ely to be attained under the guidance
le Department constituted for the pur-
ın by a disregard of its opinions and
Opinion of May 8, 1849, 5 Op. 97.

is not within the province of the At-
eneral to advise a committee of Con-
to the validity of a claim pending be-
t body. *Opinion of June* 15, 1852, 5

18. It is not the duty of the Attorney-General to give opinions on questions of fact, nor to review the proceedings of a court-martial in search of questions of law. *Opinion of Sept.* 11, 1852, 5 Op. 626.

19. It is not the duty of the Attorney-General to give advice to local officers of the Government in the Department of the Secretary of the Treasury. *Opinion of April* 20, 1853, 6 Op. 21.

20. The Attorney-General is by designation of person a member of the Smithsonian Institution; but it is not his duty individually, and as Attorney-General, to give advice to the Regents of that Institution. *Opinion of April* 21, 1853, 6 Op. 24.

21. The Attorney-General has no lawful right to give advice to individuals on matters affecting the Government, or to entertain appeals from parties on questions of law decided by the Departments; but only to give advice on public matters when required by the President, or requested by any head of Department or by the Solicitor. *Opinion of Oct.* 12, 1853, 6 Op. 147.

22. No appeal lies from the decision of the Commissioner of Pensions or other officer of the Government to the Attorney-General. *Opinion of Feb.* 11, 1854, 6 Op. 289.

23. Exposition of the constitution of the office of Attorney-General as a branch of the executive administration of the United States. *Letter of March* 8, 1854, 6 Op. 326.

24. In giving his advice and opinion on questions of law to the President and heads of Departments, the action of the Attorney-General is quasi-judicial. His opinions officially define the law, in a multitude of cases, where his decision is in practice final and conclusive; not only as respects the action of public officers in administrative matters, who are thus relieved from the responsibility which would otherwise attach to their acts, but also in questions of private right, inasmuch as parties having concerns with the Government possess in general no means of bringing a controverted matter before the courts of law, and can obtain a purely legal decision of the controversy, as distinguished from an administrative one, only by reference to the Attorney-General. *Ibid.*

25. Accordingly, the opinions of successive Attorneys-General, possessed of greater or less amount of legal acumen, acquirement, and experience, have come to constitute a body of

legal precedents and exposition, having authority the same in kind, if not the same in degree, with decisions of the courts of justice. *Ibid.*

26. It frequently happens that questions of great importance, submitted to him for determination, are elaborately argued by counsel; and whether it be so or not, he feels, in the performance of this part of his duty, that he is not a counsel giving advice to the Government as his client, but a public officer, acting judicially, under all the solemn responsibilities of conscience and of legal obligation. *Ibid.*

27. It is the regular statute duty of the Attorney-General only to conduct in person the causes of the United States in the Supreme Court; but the President may undoubtedly, in the performance of his constitutional duty, instruct the Attorney-General to give his direct personal attention to legal concerns of the United States elsewhere, when the interests of the Government seem to the President to require this. *Ibid.*

28. The Attorney-General, in certifying the title of land purchased by the Government, must look at the question as one of pure law, and cannot relax the rules of law on account either of the desirableness of the object or the smallness of the value of the land. *Opinion of April* 27, 1854, 6 Op. 432.

29. It is not the duty of the Attorney-General to determine the amount of compensation payable to counsel specially retained by the Secretary of State or other head of Department. *Opinion of July* 31, 1854, 6 Op. 635.

30. The Attorney-General has no direct relation by statute, and without order of the President, to suits instituted by either of the Departments. *Opinion of July* 5, 1855, 8 Op. 465.

31. Questions of fact arising on a survey in the case of a private land claim in California are not for the determination of the Attorney-General. *Opinion of Sept.* 18, 1855, 7 Op. 491.

32. The relation of the Attorney-General to any one of the Departments in reference to lawsuits in the business of the latter is that of counsel to client, determining matters of law, but leaving all considerations of mere administrative expediency to the proper Department. *Opinion of Oct.* 25, 1855, 7 Op. 576.

33. The opinion of the Attorney-General for the time being is in terms advisory to the Secretary who calls for it; but it is obligatory as the law of the case, unless, on appeal by such Secretary to the common superior of himself and the Attorney-General, namely, the President of the United States, it be by the latter overruled. *Opinion of May* 29, 1856, 7 Op. 692.

34. A statute of private relief enacted that a certain account in the Post-Office Department, which had been rejected by the Sixth Auditor and on which appeal had been taken to the First Comptroller, should be finally adjusted by the Second Comptroller and the Commissioner of Customs, and, in case of their disagreement, by the Attorney-General. *Held* that the effect of this provision is to substitute another person or persons, *pro hac vice*, to perform one of the statute duties of the First Comptroller. *Opinion of June* 25, 1856, 7 Op. 724.

35. This may be lawfully done, in so far as respects the Second Comptroller and the Commissioner of Customs, who will thus, in effect, control an auditing of the Sixth Auditor, and certify the same to the Postmaster-General. But the Attorney-General cannot lawfully be required to act as the substitute of the First Comptroller; and so far as regards him, the only effect is to require him to advise the Second Comptroller and the Commissioner of Customs on matters of law arising in the case. *Ibid.*

36. The opinion of the Attorney-General addressed to the Secretary of the Navy is merely advisory, and cannot be regarded as a determination of the case to which it refers, unless it appears from the record that the Secretary has adopted the advice it contained. *Opinion of June* 4, 1857, 9 Op. 33.

37. It is the rule of the Attorney-General's Office to give advice to an Executive Department only in actual cases, where the special facts are set forth by the Department. *Opinion of Sept.* 5, 1857, 9 Op. 82.

38. The Attorney-General is not required to write abstract essays on any subject. *Ibid.*

39. It is not the duty of the Attorney-General to give an opinion on a question touching the private business of individuals, and with which the Government has no present concern. *Opinion of June* 28, 1859, 9 Op. 355.

40. The Attorney-General will not give an opinion on an important legal question when it is not practically presented by an existing case before a Department. *Opinion of April* 8, 1860, 9 Op. 421.

41. The Attorney-General will not give an opinion on a case, submitted by the head of a Department, which is not depending in his Department and subject to his decision. *Opinion of June* 12, 1861, 10 Op. 50.

42. The Attorney-General will not give opinions on legal questions submitted by persons not connected with the Government, through the head of a Department, when they do not concern the action of officers of the Government, and are properly questions for the decision of courts of justice. *Opinion of Sept.* 17, 1861, 10 Op. 122.

43. In acknowledging the receipt of a resolution of the Senate, that a certain petition be referred to the Attorney-General, and that he be requested to inquire into the facts and the law of the case and report his opinion to the Senate at its next session, the Attorney-General stated that he doubted whether, in the absence of statutory authority to give official opinions to the legislative department of the Government, the assumption of such a power would not be in violation of his oath of office, and of dangerous example; and further, that, as he was not provided by law with the means of obtaining the information desired, he was compelled to decline the commission of the Senate. *Opinion of Dec.* 14, 1861, 10 Op. 164.

44. The Attorney-General is not authorized to give an official opinion, at the request of the head of a Department, upon a question the solution of which is not necessary to the discharge of any duty properly belonging to the Department. *Opinion of April* 2, 1862, 10 Op. 220.

45. The Attorney-General will only give official opinions on questions of law arising on facts which are authoritatively stated by a head of Department. *Opinion of June* 2, 1862, 10 Op. 267.

46. The political department of the Government has no legal power to annul or alter the judgment of a court of law; and, therefore, the Attorney-General will not, at the request of the Secretary of State, give an opinion as to the sufficiency of the grounds on which such a judgment was based. *Opinion of Sept.* 19, 1862, 10 Op. 347.

47. The consideration and discussion of remonstrances and reclamations on behalf of the subjects of friendly foreign governments against the operation of our laws and the judgments of our courts are within the peculiar province of the Secretary of State, and will not be assumed by the Attorney-General. *Ibid.*

48. The Attorney-General will only give an official opinion in a matter concerning a Department at the request of the head of the Department, and not at the request of a subordinate officer thereof. *Opinion of Feb.* 18, 1863, 10 Op. 458.

49. The executive holds no such relation to the judicial department of the Government as would render it proper for the Attorney-General to request a United States district judge, to furnish him with an explanation of his judicial action in a case of which he had lawful jurisdiction. *Opinion of July* 6, 1863, 10 Op. 501.

50. The Attorney-General has no power to give an official opinion on questions referred to him by the Secretary of the Treasury, at the request of the Third Auditor, for the guidance not of the Secretary, but of the Third Auditor, in a case under the act of March 3, 1849, chap. 129, which cannot come before the Secretary. *Opinion of Nov.* 10, 1863, 11 Op. 4.

51. The Attorney-General will not give a speculative opinion on an abstract question of law which does not arise in any case presented for the action of an Executive Department. *Opinion of April* 11, 1865, 11 Op. 189.

52. Nor will he review an opinion of a former Attorney-General, unless a proper case is presented therefor, and submitted by the head of a Department. *Ibid.*

53. The Attorney-General will not give an opinion as to the validity of any exercise of jurisdiction by a court of the United States without a full record of the case; and when a Department doubts the validity of such an exercise of jurisdiction, the Attorney-General will advise the head of the Department to raise the question before the court. *Opinion of Nov.* 27, 1865, 11 Op. 407.

54. The Attorney-General declines to give an opinion on the right of the Union Pacific Railroad Company to issue mortgage bonds at the request of the president of that company. *Opinion of Feb.* 28, 1866, 11 Op. 431.

55. It is not within the province of the Attorney-General to settle a controversy involving matters of fact. He can only give his opinion on questions of law. *Opinion of July* 10, 1867, 12 Op. 206.

legal precedents and exposition, having authority the same in kind, if not the same in degree, with decisions of the courts of justice. *Ibid.*

26. It frequently happens that questions of great importance, submitted to him for determination, are elaborately argued by counsel; and whether it be so or not, he feels, in the performance of this part of his duty, that he is not a counsel giving advice to the Government as his client, but a public officer, acting judicially, under all the solemn responsibilities of conscience and of legal obligation. *Ibid.*

27. It is the regular statute duty of the Attorney-General only to conduct in person the causes of the United States in the Supreme Court; but the President may undoubtedly, in the performance of his constitutional duty, instruct the Attorney-General to give his direct personal attention to legal concerns of the United States elsewhere, when the interests of the Government seem to the President to require this. *Ibid.*

28. The Attorney-General, in certifying the title of land purchased by the Government, must look at the question as one of pure law, and cannot relax the rules of law on account either of the desirableness of the object or the smallness of the value of the land. *Opinion of April* 27, 1854, 6 Op. 432.

29. It is not the duty of the Attorney-General to determine the amount of compensation payable to counsel specially retained by the Secretary of State or other head of Department. *Opinion of July* 31, 1854, 6 Op. 635.

30. The Attorney-General has no direct relation by statute, and without order of the President, to suits instituted by either of the Departments. *Opinion of July* 5, 1855, 8 Op. 465.

31. Questions of fact arising on a survey in the case of a private land claim in California are not for the determination of the Attorney-General. *Opinion of Sept.* 18, 1855, 7 Op. 491.

32. The relation of the Attorney-General to any one of the Departments in reference to lawsuits in the business of the latter is that of counsel to client, determining matters of law, but leaving all considerations of mere administrative expediency to the proper Department. *Opinion of Oct.* 25, 1855, 7 Op. 576.

33. The opinion of the Attorney-General for the time being is in terms advisory to the Secretary who calls for it; but it is obligatory as the law of the case, unless, on appeal by such Secretary to the common superior of himself and the Attorney-General, namely, the President of the United States, it be by the latter overruled. *Opinion of May* 29, 1856, 7 Op. 692.

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55. It is not within the province of the Attorney-General to settle a controversy involving matters of fact. He can only give his opinion on questions of law. *Opinion of July* 10, 1867, 12 Op. 206.

56. Where a question of law arises upon facts submitted to the Attorney-General, such facts must be agreed and stated as facts established. *Ibid.*

57. The Attorney-General will not give an opinion on a question of law determined by a Department in a case no longer before it. *Opinion of July* 20, 1868, 12 Op. 433.

58. The Attorney-General has no power to give opinions concerning any matters pending in Congress upon request of either of the Houses or of any committee. *Opinion of Jan.* 20, 1869, 12 Op. 544.

59. It is not within the official authority of the Attorney-General to impart advice in any form to either House of Congress or its committees respecting any matter of legislation. *Opinion of Jan.* 20, 1869, 12 Op. 546.

60. The act of July 20, 1868, section 102, does not require that the Attorney-General should approve the action of the Commissioner of Internal Revenue where he directs the unconditional dismissal of a judicial proceeding under the internal-revenue laws. *Opinion of Feb.* 6, 1869, 12 Op. 552.

61. Where the question proposed related to a matter pending before a court and might be raised there, and was not asked in reference to any action contemplated by the Department which submitted it, the Attorney-General requested to be excused from expressing an opinion thereon. *Opinion of Oct.* 23, 1869, 13 Op. 160.

62. The opinion of the Attorney-General may be required on questions of law arising in the actual administration of the Departments, but not upon hypothetical cases merely. *Opinion of Sept.* 9, 1871, 13 Op. 531.

63. The Attorney-General is not authorized to give an official opinion upon a question concerning the board of health of the District of Columbia, such question not arising in the administration of any of the Executive Departments. *Opinion of Nov.* 21, 1871, 13 Op. 535.

64. It is not the duty or the practice of the Attorney-General to officially answer abstract or hypothetical questions of law. *Opinion of Jan.* 8, 1872, 13 Op. 568.

65. A committee of the House of Representatives having referred the papers in certain claims to the Attorney-General, with a request for an official opinion thereon, the papers were returned unaccompanied by an opinion, the Attorney-General holding (in accordance with the views of several of his predecessors on the same point) that it is not within his province to advise committees of Congress upon questions of law occurring in matters before them. *Opinion of March* 22, 1872, 14 Op. 17.

66. The act of June 22, 1870, chap. 150, establishing the Department of Justice, made no change in the law as to the duty of the Attorney-General in giving official opinions, according to which, as it has been repeatedly held, he is authorized to give an opinion upon a question of law only on the submission thereof by the President or by the head of an Executive Department. *Opinion of March* 26, 1872, 14 Op. 21.

67. The Assistant Attorney-General attached to the Interior Department having prepared an opinion upon a case previously referred to him by the Secretary of the Interior for examination, and having submitted the same to the Attorney-General for approval: *Held* that the approval or disapproval of the said opinion by the Attorney-General would in effect be giving his official opinion where it is not called for by the President or by the head of a Department, and, therefore, where it is not authorized by law to be given. *Ibid.*

68. The papers in the claim of Capt. R. H. Wyman for prize-money, presenting, in important particulars, inconsistent and contradictory statements, were returned by the Acting Attorney-General without an opinion, to the end that the facts upon which the claim is based may be more definitely ascertained before passing upon its merits. *Letter of May* 1, 1872, 14 Op. 36.

69. Where different statements of facts appear in any case that has been submitted by the head of a Department to the Attorney-General, the latter will not undertake to reconcile the differences between them, but in giving an opinion upon the questions presented will consider only such facts as are set forth or admitted by the head of the Department. *Opinion of May* 18, 1872, 14 Op. 45.

70. The Attorney-General is not authorized to give an official opinion upon a question involving the estimation of the weight and credibility of testimony offered in support of a claim, this being mere matter of fact, which appropriately belongs to the officers charged with the adjustment and settlement of the

claim to determine. *Opinion of June* 18, 1872, 14 Op. 55.

71. Where, at the solicitation of a committee of the Senate, an opinion from the Attorney-General was requested by the Acting Secretary of the Interior upon a matter which had been previously submitted by the latter to Congress, and which was then under the consideration of said committee, for whose information solely the opinion was desired: *Held* that the Attorney-General is not authorized to give his official opinion in such case, the request being virtually an application from the committee for counsel in a matter of legislation. *Opinion of Jan.* 20, 1873, 14 Op. 177.

72. The decisions of former Attorneys-General, to the effect that it is not the duty of the Attorney-General to advise either House of Congress, or any committee thereof, upon any matter pending before the same, cited and affirmed. *Ibid.*

73. Where the question presented was very indefinite and vague, and partook of a speculative character, it was deemed inadvisable by the Attorney-General to give his official opinion thereon. *Letter of Feb.* 27, 1873, 14 Op. 191.

74. Where an official opinion from the Attorney-General is desired on questions of law arising on any case, the request should be accompanied with a statement of the material facts of the case, and also the precise questions on which advice is wanted. *Opinion of Feb.* 16, 1874, 14 Op. 367.

75. The Attorney-General has no authority to stipulate to pay an attorney at law, under the name of a fee, a sum which, as is understood beforehand, is much larger than the professional services involved can be worth, and is intended to cover, in addition thereto, services not professional. *Opinion of June* 10, 1874, 14 Op. 655.

76. Nor has he any authority to contract for the collection of claims of the United States, stipulating to pay for such service a part of the money recovered. *Ibid.*

77. *Semble* that, to enable any Department to make a valid contract for the prosecution of such claims, the power must be specially conferred by Congress. *Ibid.*

78. The question proposed in the case of George M. Giddings—which has special reference to the provision in section 3480 of the Revised Statutes, prohibiting the payment of certain claims which existed prior to April 13, 1861, and is in substance whether the claimant's demand "accrued or existed" prior to that date—being regarded as purely a question of fact, to be made out from the evidence presented, and not in any aspect a question of law, the Attorney-General declined giving an opinion thereon. *Letter of Feb.* 16, 1875, 14 Op. 526.

79. An impressment of property is simply a *conclusion of fact*, to be deduced from other facts established by the evidence submitted; and hence it is not within the province of the Attorney-General to determine the question whether there was or was not an impressment in a particular case. *Opinion of March* 5, 1875, 14 Op. 536.

80. The Attorney-General is not authorized to give an official opinion in response to a call from the head of a Department, though the call is made at the request of a committee of Congress, where the question proposed does not arise in the administration of such Department. *Opinion of July* 7, 1876, 15 Op. 138.

81. The Attorney-General cannot with propriety give an official opinion to the head of a Department upon the question whether it is expedient for him to prosecute an appeal in a matter of public interest pending before another Department. *Opinion of July* 24, 1876, 15 Op. 574.

82. The Attorney-General is not authorized by the law creating and defining his office to give legal opinions at the call of either House of Congress or of Congress itself. His duty to render such opinions is limited to calls from the President and heads of Departments. *Opinion of March* 27, 1878, 15 Op. 475.

83. In order that the Attorney-General may advise the Treasury Department, as contemplated in the act of March 3, 1875, chap. 136, all the facts upon which the question turns should be stated and presented for his consideration. *Opinion of July* 18, 1878, 16 Op. 94.

BANKS AND BANKERS.

See INTERNAL REVENUE, IV; NATIONAL BANKING ASSOCIATIONS; UNITED STATES BANK.

BANKRUPT.

1. The payment of a debt to, and the discharge of the demand, by two of three assignees of a bankrupt's estate, is not strictly a valid discharge. *Opinion of Dec.* 1, 1804, 5 Op. 693.

2. Where a payment is made by a debtor to a creditor who has committed an act of bankruptcy, and against whom proceedings in bankruptcy have been instituted and are pending, but who has not yet been adjudged a bankrupt, it will not be a valid satisfaction of the debt, in the event of an adjudication of bankruptcy in such proceedings, if the payment transpired subsequent to the filing of the petition therein. *Opinion of Nov.* 18, 1873, 14 Op. 331.

3. But a payment made by a debtor to a creditor who is known to have committed an act of bankruptcy, but against whom proceedings have not at the time been taken, is valid, so far at least as the present bankrupt law is concerned. *Ibid.*

4. All debts and liabilities subsisting in favor of the bankrupt at the period when the petition was filed, or then constituting a part of his estate, together with the right to receive or sue for and recover the same, become upon the execution of the assignment completely and exclusively vested in the assignee by relation to that period. *Ibid.*

5. Hence a payment to the bankrupt of any such debt or liability after that date would be no satisfaction of the demand as against the claim of the assignee, *unless the payment is protected by some exception made by Congress which covers the particular case. Ibid.*

6. Neither the bankrupt act of March 2, 1867, chap. 176, nor its supplements, contain any exception, express or implied, in favor of a debtor who has paid his debt to the bankrupt after the time of filing the petition against the latter. *Ibid.*

7. It follows that the claim of the assignee, duly appointed, must prevail against the debtor, notwithstanding such payment, though it was made *bona fide* and without knowledge of the bankruptcy proceeding. *Ibid.*

8. Bankruptcy proceedings against members of a partnership individually do not affect relations between such partnership and its creditors or debtors. *Opinion of Aug.* 2, 1875, 15 Op. 28.

BEQUEST OF JAMES SMITHSON.

1. The entire legacy bequeathed to the United States by James Smithson, for the purpose of founding an establishment in the city of Washington for the increase and diffusion of knowledge, should be kept entire for effectuating the purposes of the testator. *Opinion of Nov.* 16, 1838, 3 Op. 383.

2. The expenses of prosecuting for the said legacy, and of receiving and transporting it to this country, including additional expenses incurred, ought, therefore, to be defrayed out of the appropriation made by the act of July 1, 1836, chap. 252. *Ibid.*

3. The personal effects, other than cash and stocks, which have been transferred to the United States should be disposed of as Congress may direct. *Ibid.*

BELLIGERENTS.

See CIVIL WAR; INTERNATIONAL LAW; NEUTRALITY; NEUTRAL TERRITORY.

BIDS AND BIDDERS.

See CONTRACT, III; POSTAL SERVICE, II.

BILL OF EXCHANGE.

See also DRAFTS OF FOREIGN GOVERNMENT; NEGOTIABLE PAPER.

Bills of exchange may be indorsed under an authority derived from a power of attorney. *Opinion of April* 27, 1816, 1 Op. 188.

BLOCKADE.

1. Property found on the persons of individuals captured by the Potomac flotilla in the act of violating the blockade should be reported to the district attorney for examination into the facts of the capture, with a view to

the institution of the appropriate proceedings for confiscation, if there be reasonable cause for judicial investigation of the case. *Opinion of March* 9, 1863, 10 Op. 467.

2. The Secretary of the Treasury has no power, under the eighth section of the act of July 13, 1861, chap. 3, to remit the forfeiture of a vessel or cargo incurred under the law of war on account of a breach of blockade. *Opinion of March* 15, 1865, 11 Op. 430.

BOND.

See also CUSTOMS LAWS, VI; INTERNAL REVENUE, VI, VII; POSTAL SERVICE, III.

I. *Generally.*
II. *Official Bonds.*
III. *Other Bonds.*

I. Generally.

1. Bonds must be sealed; and for abundant caution they should be sealed with wax, or wafer and paper cap, which are everywhere acknowledged to be seals; although scrolls or any other sealing would be valid which is a good sealing in the place where they are executed. *Opinion of June* 24, 1828, 2 Op. 93.

2. No attestation is necessary to their validity, although witnesses may be useful and convenient to make proof of handwriting in case of necessity. *Ibid.*

3. The bonds of the deposit banks are analogous to the bonds given by public officers on their appointment, and should be retained in the public archives, unless Congress shall otherwise determine. *Opinion of Nov.* 20, 1837, 3 Op. 292.

4. A bond, to be accepted by the Government, ought to be executed by the obligees, and not by their attorney. *Opinion of Nov.* 5, 1857, 9 Op. 128.

II. Official Bonds.

5. The assayer, chief coiner, and treasurer of the mint cannot execute their offices legally unless they have given bonds for the faithful performance of their duties. *Opinion of Dec.* 6, 1793, 5 Op. 687.

6. Pursers who have neglected to give bond on or before the 1st day of May, 1817, except those who may be then on "distant service," are, under the operation of the act of March 1, 1817, chap. 24, out of office by the neglect. *Opinion of May* 14, 1817, 5 Op. 706.

7. Where a commissary-general of the Army had omitted to sign his official bond, but had delivered it to the proper Department signed only by the sureties: *Advised* that it be now signed by him, and attested specially in the form prescribed by the Attorney-General. *Opinion of Oct.* 5, 1819, 5 Op. 718.

8. If the paymasters retained in the service under the act of March 2, 1821, chap. 13, are charged with duties other and different from those which previously devolved upon them, they ought to give new official bonds. *Opinion of April* 27, 1821, 5 Op. 733.

9. The bond of a purser is required to be approved by the judge or attorney for the United States of the district in which he shall reside; and to save the necessity of proof on this subject the residence should be expressed in the body of the instrument. *Opinion of June* 24, 1828, 2 Op. 93.

10. The certificate of the district attorney approving the sureties is, to all substantial purposes, an approval of the bond. *Ibid.*

11. The law recognizes but one Christian name; hence the bond, with sureties, and the oath of office of a receiver of public moneys, subscribed "Benjamin F. Edwards," where the commission had issued to "Benjamin Edwards," are valid. *Opinion of March* 28, 1830, 2 Op. 332.

12. The bond given by a Navy agent under his first commission, which was issued upon a temporary appointment made during the recess of the Senate, ceases to have effect after the acceptance of a new commission under an appointment made with the consent of the Senate. *Opinion of April* 2, 1830, 2 Op. 333.

13. Deputy postmasters who shall be required to execute the functions of depositaries under the eighth section of the act of July 4, 1840, chap. 41, ought to give new bonds, with sureties, to be approved by the Solicitor of the Treasury. Instructions respecting the form and penalty of the bonds should be given through the Post-Office Department. *Opinion of July* 18, 1840, 3 Op. 575.

14. Collectors who are made depositaries of the public moneys under the act of 4th July,

1840, chap. 41, are required to execute a new bond, with sureties, conditioned for the performance of the new duties required by said act, as well as those before required. *Opinion of July* 31, 1840, 3 Op. 584.

15. Collectors are not required to give bonds in a larger amount than before, under the act of July 4, 1840, chap. 41, unless it shall be deemed necessary by the proper officers of the Department; but they are required to give new bonds, with new conditions, embracing the new duties devolved upon them as well as those previously required. *Opinion of Aug.* 24, 1840, 3 Op. 586.

16. If the proper Department shall deem it expedient, it may, in lieu of a new bond (under the act of July 4, 1840, chap. 41), embracing all the duties of the collector, take a new bond, in a suitable penalty, embracing the new duties only, leaving the old one outstanding. *Opinion of Dec.* 7, 1840, 3 Op. 600; see also *Opinion of Jan.* 7. 1841, *ibid.* 610.

17. It is not material whether bonds taken under the provisions of the thirty-seventh section of the act of July 2, 1836, chap. 270, are accepted in the mode suggested by the Auditor in his communication of the 10th of May, 1843, or in that which, for greater convenience, has been adopted by the Postmaster-General, no form being prescribed by the act. *Opinion of July* 12, 1843, 4 Op. 187.

18. For the security of the sureties bound in the previous obligation, the date of the acceptance should be indorsed on the bond; yet the parties to the new bond are bound by the acceptance, in fact, of their bond by the Postmaster-General, and this acceptance may be shown as any other fact is required to be. *Ibid.*

19. The validity of the bond of a receiver is not affected by his discharge as a bankrupt, nor are his sureties discharged or released thereby. *Opinion of Sept.* 23, 1843, 4 Op. 253.

20. It is a sound regulation, conformable to law, for the Secretary of the Treasury not to give up to the collectors their original bonds on the execution of new ones. *Opinion of April* 2, 1844, 4 Op. 312.

21. Neither the act requiring bonds of collectors to be deposited in the office of the Comptroller, nor any other, authorizes a withdrawal of them, except for the purposes of suit. *Ibid.*

22. Pursers are liable upon their bonds for public stores committed to their charge, even though such stores are destroyed by inevitable accident. *Opinion of Feb.* 11, 1845, 4 Op. 355.

23. It is in the discretion of the President whether or not to require bonds of an officer of the Engineer Corps employed as disbursing agent of the Government. *Opinion of April* 20, 1853, 6 Op. 24.

24. The President has no authority to release the sureties on a bond given to the United States by a marshal for the faithful discharge of the duties of his office. *Opinion of March* 12, 1855, 7 Op. 62.

25. Where a temporary appointment of United States marshal has been made by the President the recital in the official bond should be in conformity with the nature of the appointment. *Opinion of Aug.* 14, 1857, 9 Op. 53.

26. When the legal effect of an official bond is questionable it should be rejected. *Opinion of Dec.* 9, 1858, 9 Op. 263.

27. The marshals of the several Territories of the United States are required to give bond for the faithful discharge of their duties, in the manner prescribed by the twenty-seventh section of the act of September 24, 1789, chap. 20. The opinion of Attorney-General Black, of June 9, 1860, that said act does not apply to a marshal of a Territory, dissented from. *Opinion of June* 15, 1861, 10 Op. 68.

28. A consul's bond, given under the thirteenth section of the act of August 18, 1856, chap. 127, speaks and takes effect not from its date, but from the time of its approval by the Secretary of State. *Opinion of Feb.* 1, 1872, 14 Op. 7.

29. Accordingly, where an appointee to a consulship was commissioned on the 18th of January, and his bond, though dated on the 13th of same month, was not approved by the Secretary until the 27th: *Held* that the bond was valid and sufficient under said act. *Ibid.*

30. The liability of sureties upon the official bond of a collector of customs is limited to acts done by him during his term of office. They are not responsible for defaults committed in relation to public moneys received by him after the term for which he was appointed. *Opinion of April* 5, 1877, 15 Op. 214.

III. Other Bonds.

31. A clerical error in a contractor's bond should not operate to his prejudice. *Opinion of May* 11, 1852, 5 Op. 547.

32. The reference to the "fares and tolls allowed to Northern railroads" in the bond given by the Mobile and Ohio Railroad Company to the United States, dated November 1, 1865, for rolling-stock, &c., purchased from the Government, is to be understood as meaning the fares and tolls allowed by the general regulations of the Quartermaster's Department to railroads in what were known as the "Northern States" in contradistinction to the Southern or former slave States; it does not include railroads in what were called the "border States." *Opinion of May* 3, 1872, 14 Op. 592.

33. Pending the execution of an order for a reappraisement of an importation of gloves, the importers, anxious to get their goods, proposed to leave samples on which to make the appraisement, and give a bond to pay "all duties and charges" finally assessed upon the importation, waiving all objections that might be made on the ground that the goods were not retained by the United States until final appraisement; and this arrangement was entered into by permission of the Secretary of the Treasury. The final appraisement resulted in an addition of more than 10 per cent. beyond the invoice and entered values; so that, under ordinary circumstances, the goods would be liable to the additional duty of 20 per cent. imposed by the seventh section of the act of March 3, 1835, chap. 80. *Held* that by the terms of the bond it included the payment of such additional duty, and that the importers are liable therefor. *Opinion of June* 23, 1874, 14 Op. 658.

34. A bond which accompanies a proposal for carrying the mail, though actually signed by the parties thereto in one of the States, is to be regarded as made at Washington, the intended place of delivery. *Opinion of March* 22, 1878, 15 Op. 472.

35. Hence, where a married woman is on such a bond as a surety for her husband, her capacity to enter into the contract for suretyship, and thereby to subject her separate property to liability, must be determined by the laws of the District of Columbia. *Ibid.*

36. Under the laws of the District a married woman cannot thus bind her separate property. *Ibid.*

BONDS FOR PACIFIC RAILROAD COMPANY.

1. Authority of the several attorneys and agents of the Pacific Railroad Company to receive and assign the bonds deliverable to the company under acts of July 1, 1862, chap. 120, and July 2, 1864, chap. 216. *Opinion of April* 1, 1865, 11 Op. 183.

2. Opinion of April 1, 1865 (11 Op. 183), reaffirmed. *Opinion of April* 11, 1865, 11 Op. 188.

BONDS OF THE UNITED STATES.

See also BONDS FOR PACIFIC RAILROAD COMPANY; FUNDED DEBT; PUBLIC LOANS.

1. Coupons of the loan authorized by act of April 15, 1842, chap. 26, should be signed by a person acting under the direction of the Secretary of the Treasury. *Opinion of Jan.* 31, 1843, 4 Op. 143.

2. On questions suggested as to the delivery of the reserved stock, arising upon the act of September 9, 1850, chap. 49, which directed the delivery by the United States of ten millions of dollars in stock to the State of Texas, provided that no more than five millions of said stock be issued until certain creditors of the State should have filed in the Treasury releases of all claims against the United States: *Held* that the Secretary of the Treasury cannot make delivery of the reserved five millions by apportionment, but must withhold all payments until evidence be presented to him of the complete discharge of the United States in the premises. *Opinion of Sept.* 26, 1853, 6 Op. 130.

3. By the Treasury regulations transfer of public stocks held by foreign decedents may be made on satisfactory proof that the party claiming the right in such stocks is entitled as devisee, distributee, or otherwise, according to law. *Opinion of May* 31, 1855, 7 Op. 240.

4. Bonds of the United States issued under the act of April 15, 1842, chap. 26, and held at and before the commencement of the rebell-

ion by a citizen of Virginia who never took any active part in the rebellion, and whose property is not liable to seizure under the confiscation acts, are, in the year 1866, valid obligations of the United States in the hands of the holder, and may be lawfully paid to him. *Opinion of Aug.* 28, 1866, 12 Op. 19.

5. On the 24th of June, 1862, Messrs. Peabody & Co., of London, purchased in England, for full value, of a regular broker, accustomed to deal in American securities, a number of the bonds issued to the State of Texas by the United States under the act of September 9, 1850, chap. 49. These bonds had been turned over by the rebel authorities of Texas to the military board (so called); had been placed by that board in the hands of an agent for sale in Europe, for the purpose of raising supplies for the rebel forces; and had been placed by said agent in the hands of a broker in London, of whom they were purchased by Messrs. Peabody & Co., without notice of the actual ownership of the bonds, or of any fact to excite suspicion of their invalidity. *Held* that the said bonds were existing valid obligations against the United States in the hands of the purchasers. *Opinion of Oct.* 15, 1866, 12 Op. 72.

6. The twenty-five Texas indemnity bonds held by Messrs. R. and D. G. Mills, of Galveston, are valid obligations in their hands against the United States, upon the principles stated in the opinion in the case of Messrs. Peabody & Co., of London. *Opinion of Oct.* 29, 1866, 12 Op. 78.

7. The joint resolution of March 2, 1867, prohibiting payment to any person not known to have been opposed to the rebellion, does not affect the payment of certificates of funded stock issued under the act of January 28, 1847, chap 5. *Opinion of May* 8, 1868, 12 Op. 407.

8. By the act of March 2, 1861, chap. 85, authority was given to the Secretary of the Treasury to issue to the proper authorities of the Choctaw tribe of Indians, on their requisition, bonds of the United States to the amount of $250,000 on account of a claim of said tribe against the Government. This authority was, by subsequent legislation, withdrawn from the Secretary before any requisition for the bonds had been made by the tribe; but, by the act of March 3, 1871, chap. 120, Congress authorized the Secretary to issue to the tribe bonds to the amount of $250,000, as directed by the first-mentioned act. The tribe has since requested the Secretary to issue the bonds, and also to pay interest on the same from March 2, 1861. *Held* that the bonds, being issuable only in virtue of the authority given by the act of 1871, must bear date subsequent to the passage of that act, and that they cannot be made to bear interest from a period anterior to their date; *held, further*, that the Secretary is not authorized to pay interest upon the said amount of $250,000 prior to the date of the bonds which may be issued under that act. *Opinion of April* 17, 1872, 14 Op. 29.

9. The provision in the act of July 14, 1870, chap. 256, requiring bonds issued thereunder to be made "redeemable in coin of the present standard value," does not authorize the Secretary of the Treasury to stipulate in the body of the bond that it shall be redeemed in coin of the standard value existing at the date of the issue of the bond. *Opinion of April* 26, 1877, 15 Op. 233.

10. The word "present" in that provision refers to the date of the act; and the bond cannot be made otherwise redeemable than in coin of standard value at the date of the act. *Ibid.*

11. Section 3702 Rev. Stat. does not authorize relief to be given in the case of coupons destroyed or defaced after their separation from the bonds to which they were attached. Its provisions apply solely to destroyed or defaced interest-bearing bonds. *Opinion of Jan.* 29, 1878, 15 Op. 439.

12. Coupons, whilst remaining attached to the bonds with which they were issued, are to be regarded as parts thereof, and, if then defaced or destroyed, the case would fall within the section as one of partial defacement or destruction of the bond. But they lose that character after being detached. *Ibid.*

13. Where satisfactory proof is furnished that a registered bond, called in for redemption, has been lost, payment thereof may be made upon a bond of indemnity being given by the owner, in conformity with the requirements of section 3705 Rev. Stat. *Opinion of March* 20, 1878, 15 Op. 468.

BOOTY.

During the rebellion certain barges were impressed into the military service of the insur-

gent States, and continued in that service until their capture by the Army of the United States, after which they were retained for the use of the Quartermaster's Department: *Advised* that the barges are military booty, and belong wholly to the United States; that the War Department has the same right to dispose of them as of other property of the United States in its possession of a similar kind. *Opinion of June* 19, 1869, 13 Op. 105.

BOSTON POST-OFFICE.

After the date of the act of March 3, 1859, chap. 82, and the removal of the post-office at Boston from State street, the Postmaster-General had no authority to restore the office to State street until the indemnity provided for in the proviso to the seventh section of that act was furnished. *Opinion of March* 24, 1859, 9 Op. 315.

BOUNDARIES.

When a river is the line of arcifinious boundary between two nations, its natural channel so continues, notwithstanding any changes of its course by accretion or decretion of either bank; but if the course be changed abruptly into a new bed by irruption or avulsion, then the river-bed becomes the boundary. *Opinion of Nov.* 11, 1856, 8 Op. 175.

BOUNTY.

See also BOUNTY LAND; FISHING BOUNTIES; HEAD MONEY.

I. *Generally.*
II. *Colored Soldiers.*
III. *Indian Troops.*
IV. *Forfeiture of.*

I. Generally.

1. The Second Auditor of the Treasury has lawful jurisdiction of the claims for bounty, under the act of July 22, 1861, chap. 9, and not the Commissioner of Pensions. *Opinion of Nov.* 13, 1862, 10 Op. 371.

2. It is not the duty of the Commissioner of Pensions to furnish blank forms for applications for such bounties, nor is he authorized to prescribe forms for such applications. *Ibid.*

3. The enlisted men of the Marine Corps are not entitled to the bounty provided by the fifth section of the act of July 29, 1861, chap. 24, for the men "enlisted in the regular forces." *Opinion of Sept.* 29, 1864, 11 Op. 100.

4. The regulations of the War Department in reference to the payment of bounties to veterans mustered out of service before the expiration of their term of enlistment, by reason of their service being no longer required, have the force of law, by effect of joint resolutions of January 13, 1864, and March 3, 1864. *Opinion of May* 6, 1865, 11 Op. 224.

5. A volunteer mustered into service under act of July 4, 1864, chap. 237, is entitled, if mustered out for the above reason before the expiration of his period of service, to receive only the proportion of the bounty allowed by the act which had actually accrued before the date of his discharge. *Ibid.*

6. Drafted men and substitutes are entitled to the bounty provided by the act of July 28, 1866, chap. 296. *Opinion of Sept.* 7, 1866, 12 Op. 24.

7. Soldiers enlisted in the regular Army between the 19th of April and the 1st of July, 1861, are entitled to the bounty provided by that act. *Ibid.*

8. Non-resident parents of deceased soldiers are entitled to the bounty. *Ibid.*

9. The fourteenth section of the said act of 1866 does not cover the case of a sale or transfer by the *heir* of a soldier of his final discharge papers, &c.; it is confined to a sale or transfer by the soldier himself. *Ibid.*

10. If a soldier brings himself within all the qualifications specified in the act, of enlistment, service, and honorable discharge, he is entitled to the bounty; and he cannot be required to make an affidavit that he was not a deserter from the service during the term of his enlistment. *Ibid.*

11. The Secretary of War has no legal authority to exclude authorized attorneys and agents from collecting the bounties granted by the act of July 28, 1866, chap. 296. *Opinion of Oct.* 8, 1866, 12 Op. 66.

12. The provisions of the first section of the act of March 3, 1869, chap. 133, extend to the

claims for bounty of soldiers who enlisted under the act of July 4, 1864, chap. 237. *Opinion of Jan.* 19, 1870, 13 Op. 201.

13. Under the various bounty acts passed from time to time previous to the act of March 3, 1869, chap. 133, soldiers were not in general entitled to receive the whole of the bounty provided for the term of their enlistment until they had actually served out the full term; and the effect of the first section of that act is to make an exception in favor of those whose discharges state that they were discharged by reason of the expiration of their term of service, although in fact they did not serve out the full term of their enlistment. *Ibid.*

14. What the term of enlistment was, in any case, must be ascertained from the enlistment papers, or rolls, or documents, or from any other sources of information which, by law, are evidence of the contract of service; and the soldier should be paid the bounty allowed by law for that period of service, whatever in such case it may be. *Ibid.*

15. Soldiers who enlisted for three years or during the war, and were discharged by reason of the termination of the war, are to be regarded as having served out the period of their enlistment, and are entitled to the additional bounty granted by the twelfth section of the act of July 28, 1866, chap. 296; and their discharges need not state that they were discharged by reason of the expiration of their term of service to entitle them to be paid that bounty. *Ibid.*

16. Where a person, in October, 1864, had enlisted for a term of three years under the act of July 4, 1864, chap. 237, and was discharged in July, 1867, agreeably to the provisions of a general order from the War Department authorizing discharges prior to the expiration of the term of enlistment in certain circumstances in which the soldier would be greatly incommoded by remaining the full term: *Held*, first, that if he was discharged with his own consent, his discharge not stating that it was granted by reason of the expiration of his term, he is not entitled to the last installment of bounty provided by the said act of July 4, 1864; second, if he was discharged without his consent he is entitled to that installment; third, if his discharge states that he is discharged by reason of expiration of term of service, he is entitled to the installment by force of section 1 of the act of March 3, 1869, chap. 133. *Opinion of Jan.* 6, 1872, 13 Op. 562.

17. Where a soldier was enlisted in the Army as a volunteer in December, 1861, for three years, but afterward, and before the expiration of his term of enlistment, was voluntarily transferred to the naval service, in which he served out the remainder of his term: *Held* that he is not entitled to the additional bounty provided by the act of July 28, 1866, chap. 296. *Opinion of April* 23, 1873, 14 Op. 223.

18. Enrollment before the proclamation and orders mentioned in the act of April 22, 1872, chap. 114, were issued does not preclude a claim for bounty under that act, where the company or regiment was mustered into the military service of the United States prior to July 22, 1861, under the said proclamation and orders. *Opinion of May* 11, 1875, 14 Op. 581.

19. Where the discharge certificate of a soldier who belonged to a company or regiment thus mustered is in the usual form of one given upon an honorable discharge from the military service, the character of his discharge from service must be deemed to be (what his discharge certificate represents it to be) honorable, and to entitle him to bounty under said act, whatever may have been the circumstances under which his company or regiment was disbanded. *Ibid.*

II. Colored Soldiers.

20. The classes of colored persons enfranchised after April 19, 1861, by operation of acts of Congress and the emancipation proclamation, and enlisted into the military service, who are entitled to bounty, indicated. *Opinion of Oct.* 17, 1865, 11 Op. 365.

21. Colored soldiers who were slaves at the time of entering the military service are entitled to the bounty provided for in the twelfth and thirteenth sections of the act of July 28, 1866, chap. 296. *Opinion of Nov.* 13, 1866, 12 Op. 91.

22. The heirs or legal representatives of deceased colored soldiers enlisted during the rebellion, and borne on the rolls as slaves, are, by virtue of the act of March 3, 1873, chap. 262 (section 4723 Rev. Stat.), entitled to bounty; the effect of that statute being to extend the provisions of the bounty acts alike to all colored soldiers, whatever their former *status*

might have been. *Opinion of March* 26, 1878, 15 Op. 474.

23. Bounty can lawfully be paid, under act of July 11, 1862, chap. 144, to one who claims as father of a colored soldier, without other proof of heirship than that the claimant and the soldier's mother lived together as man and wife; assuming that the claimant, mother, and soldier were all slaves at the time of the soldier's enlistment, that there is no sufficient rebutting evidence in the case, and that the living together was at the proper time. In default of father and mother, the bounty can be paid, under like circumstances, to one claiming as brother or sister who was not born of the soldier's mother. The distinction made by statute between colored and other soldiers in pension cases, &c., in regard to proof of marriage (sections 2037 and 4705 Rev. Stat.) extends only to the marriage of *the soldier*, and does not affect that of his parents or other relatives. *Opinion of May* 9, 1879, 16 Op. 630.

III. Indian Troops.

24. The soldiers of the First, Second, and Third Indian Regiments, recruited by authority of the War Department in May and August, 1861, under the act of July 22, 1861, chap. 9, are entitled to bounty under the act of July 28, 1866, chap. 296. *Opinion of Sept.* 21, 1867, 12 Op. 246.

25. The opinion of the Attorney-General of September 21, 1867 (12 Op. 246), in favor of the right of the Indian regiments to the bounty provided by the act of July 28, 1866, chap. 296, affirmed. *Opinion of July* 24, 1868, 12 Op. 437.

IV. Forfeiture of.

26. Upon the question presented by the Secretary of War, viz, as to the right of a deserter, whether tried and convicted by a court-martial or not (if, when so tried and convicted, forfeiture of bounty or a dishonorable discharge is no part of the sentence), on being returned to service and making up the time lost by his desertion, to receive the same bounty as if he had not deserted, or any bounty at all under the various statutes relating to bounty, the Attorney-General, in view of the fact that cases are pending in the Court of Claims in which substantially the same question must be considered and decided, and which may be ultimately carried before the Supreme Court, gives no opinion, but advises that the existing practice of the War Department in executing the bounty acts be continued until the question is judicially determined. [See NOTE, 13 Op. 188; also the case of *United States* v. *Kelley*, 15 Wall., 34.] *Opinion of Jan.* 13, 1870, 13 Op. 185.

27. The installments of bounty provided by the act of July 4, 1864, chap. 237, which are *not already due and payable* to a soldier at the time he deserts never become due and payable in case he does not return or is not returned to service, and are not *forfeited* in the legal sense of that word. *Opinion of Jan.* 18, 1870, 13 Op. 189.

28. Nor, in case the deserter returns or is apprehended and put back into service, are such installments forfeited *on account of desertion* within the meaning of those words in the act of March 21, 1866, chap. 21; because either the soldier, on serving out his term, is entitled to receive them, or they never become due and payable by reason of his desertion. *Ibid.*

29. But the installments of bounty *due and payable* at the time of desertion are forfeited thereby in both those cases, and become payable to the Board of Managers of the National Asylum for Disabled Volunteer Soldiers under the said act of March 21, 1866. *Ibid.*

30. The various statutes relating to bounty reviewed and considered in connection with the Army regulations relating to forfeiture for desertion. *Ibid.*

BOUNTY LAND.

See also PUBLIC LANDS, VI.

1. Non-commissioned officers and soldiers, whether minors or not, enlisted after 10th December, 1814, are entitled to a bounty of 320 acres of land, when discharged from service, on presenting the proper certificates of faithful performance of duty while in service. *Opinion of Aug.* 1, 1815, 1 Op. 185.

2. The fact of minority does not create any incapacity to take land bounty any more than bounty in money or pay. The minor who brings himself within all the other requisites is entitled to his land-warrant in like manner with persons of full age. *Ibid.*

3. Under the act of 16th April, 1816, chap. 55, a child must have been sixteen years of age at the death of the non-commissioned officer, musician, or private in order to invest the guardian with the right to commute the bounty land for half-pay. *Opinion of Dec.* 24, 1816, 1 Op. 195.

4. A person who enlisted as a soldier in the war of 1812, and served as such until commissioned, but who resigned his commission before the close of the war, is entitled to bounty land, under the act of April 16, 1816, chap. 55, provided the enlistment was for five years or during the war. *Opinion of July* 29, 1819, 1 Op. 273.

5. Although in the acts under which troops were raised in the late war it was not the intention of Congress to incorporate negroes and people of color with the Army any more than with the militia of the United States, yet, as they were enlisted in the usual manner, and treated as a part of the Army by the Government officers, a *practical* construction had thus been given to those acts which entitles colored soldiers to the promised land bounty. *Opinion of March* 27, 1823, 1 Op. 602.

6. Soldiers enlisted to serve for the term of five years under the act of January 11, 1812, chap. 14, and who were honorably discharged before the expiration of their term of service in consequence of having furnished accepted substitutes, are entitled to 160 acres of land under that act, even though the substitutes may have deserted. *Opinion of Nov.* 4, 1831, 2 Op. 470.

7. Where B., a citizen of Maryland, who was entitled to bounty land, died intestate, leaving him surviving a widow and several children, and where, after the demise of the widow and children (the widow surviving the children), the heirs of the widow claimed the land: *Held* that the widow was not the heir of the surviving child of B. as its mother, except there was no representative of the child in the paternal line, and that, there being no evidence of this, the claim should not be allowed. *Opinion of Sept.* 5, 1833, 2 Op. 579.

8. Under the laws of Maryland a mother is not the heir of a child, unless there are no representatives of the child in the paternal line. *Ibid.*

9. Discharged soldiers entitled either to bounty land or Treasury scrip under the act of February 11, 1847, chap. 8, who have once elected to take Treasury scrip instead of bounty land, and have obtained the requisite certificate therefor from the Commissioner of Pensions, cannot afterwards be permitted to surrender such scrip and obtain a warrant for lands instead. *Opinion of Oct.* 30, 1847, 4 Op. 642.

10. Soldiers who enlisted during the war with Mexico for twelve months, but who, without having been wounded or sick, were honorably discharged before the expiration of their term of service, are not entitled to bounty lands under the act of 11th February, 1847, chap. 8. *Opinion of March* 17, 1848, 4 Op. 718.

11. A soldier who enlisted in the Army in 1846 for the term of five years and served until April, 1849, when, in consequence of the reduction of the Army after the termination of the war with Mexico, he was honorably discharged, against his own wishes, is entitled to the bounty land provided by the ninth section of the act of February 11, 1847, chap. 8. *Opinion of July* 27, 1849, 5 Op. 147.

12. The ninth section of that act embraces those of the regular Army enlisted for twelve months or for a longer period; volunteers regularly mustered into a volunteer company, who served during the war and have been honorably discharged; those killed, or who died of wounds received or by sickness incurred in the course of their service; and those who were discharged before the expiration of their term of service in consequence of wounds received or sickness incurred in the course of their service. *Ibid.*

13. The entire portion of the Marine Corps, whether they served on shipboard or on land, on the Mexican coast or in the interior, in the Mexican war, are to be considered within the meaning of the joint resolution of the 10th of August, 1848, as having "served with the Army in the war with Mexico," and entitled to the bounty land and other remuneration which that resolution provides. *Opinion of Sept.* 17, 1849, 5 Op. 155.

14. Where a land-warrant was issued to the administrator *de bonis non* of a deceased colonel for the benefit of the devisees, scrip in exchange may issue in the same manner and for the same purposes. *Opinion of March* 24, 1851, 5 Op. 308.

15. The bounty-land provision of the act of March 3, 1855, chap. 207, section 1, embraces

not only militia or volunteers whose military services were performed under the general command of the United States and in time of war, but also such as rendered military service whether in war or not, and whether under the immediate authority of the United States or of a State or Territory, but who shall have been paid for such service by the United States. *Opinion of Dec.* 14, 1855, 7 Op. 606.

16. A land-warrant issued after the death of a claimant who left a widow and children inures to the widow's benefit alone. *Opinion of Oct.* 28, 1858, 9 Op. 243.

17. Where the deceased claimant was a widow, with two sets of children, the warrant inures to the benefit of her heirs or legatees. *Ibid.*

18. Heirs are those who are so declared by the law of the claimant's domicile. *Ibid.*

19. Under the act of September 28, 1850, chap. 85, the date of the application is the one at which a person claiming as a minor must be shown to have been under full age; and where this is established the right of the claimant will not be defeated by obtaining his or her majority before the case is finally disposed of. *Opinion of May* 21, 1860, 9 Op. 427.

20. The act does not vest the right to the warrant for bounty land in the child of a minor before his or her claim is filed. *Ibid.*

21. Minor children born after the date of the act are included within its provisions. *Ibid.*

BRANCH MINT AT NEW ORLEANS.

1. A sale or abandonment of the property on which the branch mint at New Orleans is erected would cause the same to revert to the grantor. *Opinion of April* 21, 1868, 12 Op. 389.

2. Any disposition or removal of the structures now on the land inconsistent with the purposes of a branch mint thereon would enable the grantors to avoid, by judicial proceedings, the right of the United States to the use and occupation of the premises. *Ibid.*

BREVET.

See ARMY, III; MARINE CORPS, II.

BRIDGES.

See also FORT SNELLING; ROCK ISLAND BRIDGE.

1. The Government may permit the Davenport and Saint Paul Railroad Company to use the bridge across the Mississippi River at Rock Island, upon the payment by that company of one-third of the cost thereof, one-half of which to be paid to the United States and the other half to the Chicago, Rock Island and Pacific Railroad Company (assuming that the latter company has complied with the requirements of the joint resolution of July 20, 1868). *Opinion of April* 18, 1872, 14 Op. 32.

2. The provision in the act of June 4, 1872, chap. 281, entitled "An act further regulating the construction of bridges across the Mississippi River," which requires the Secretary of War, in locating any such bridge, to "have due regard to the * * * wants of all railways and highways crossing said river," commented on and construed. *Opinion of Aug.* 7, 1872, 14 Op. 92.

3. Where a bridge is to be located under an act wherein only railway use is mentioned and provided for, the wants of railways only are to be considered. But it is otherwise where the bridge is to be located under an act providing for both railways and wagon-ways. There the wants of both kinds of road are to be regarded, and the location should be made with a view to the accommodation of each. *Ibid.*

4. Provisions of the acts of April 1, 1872, chap. 73, and June 4, 1872, chap. 281, relative to the location and construction of railroad bridges across the Mississippi River, examined, and the authority of the Secretary of War in the premises stated and defined. *Opinion of June* 7, 1873, 14 Op. 254.

5. The act of June 20, 1878, chap. 359, appropriating $65,000 to aid in the construction of a bridge at Fort Snelling, Minn., contemplates a supervision of the work as it progresses by the Government, to determine whether it is done in accordance with the plan and specifications approved by the Secretary of War *Opinion of Aug.* 31, 1878, 16 Op. 125.

6. The incidental expenses of the officer or officers detailed for that purpose (there being no special provision made therefor) are to be

defrayed in the manner that similar expenses in analogous cases are met. *Ibid.*

7. It is not obligatory upon the United States, as proprietor of the line of water communication between the Fox and Wisconsin Rivers formerly owned by the Green Bay and Mississippi Canal Company, to maintain the drawbridge over the Portage Canal located at Wisconsin street, in the city of Portage, Wis., where that street crosses the canal and intersects De Witt street. *Opinion of Jan.* 21, 1880, 16 Op. 424.

CADET.

See ARMY; MILITARY ACADEMY; NAVAL ACADEMY; NAVY.

CANAL BOAT.

See COMMERCE AND NAVIGATION, II, III; MARINE HOSPITAL TAX.

CAPTURE.

See also BLOCKADE; PRIZE.

1. In deciding upon the fact whether a captured vessel was taken in any place within the territory or protection of the United States some rules must be adopted for ascertaining the competency of the evidence offered, and none appear more proper than those which prevail in the courts of admiralty, and which, being founded on general and universal principles, are essential to a safe and pure administration of justice. *Opinion of Feb.* 12, 1794, 1 Op. 40.

2. *Ex parte* affidavits of persons directly interested are not evidence; but the master of a vessel is a competent witness in the admiralty. *Ibid.*

3. General Gillmore, in command at Savannah, had authority in April, 1865, to stipulate for the payment of a just compensation to rebel deserters for the capture of a rebel vessel lying in an interior river, and the stipulated compensation should be paid by the War Department after the performance of the service and the delivery of the vessel into the possession of the United States. *Opinion of July* 28, 1865, 11 Op. 293.

4. Property which was sold to the rebel authorities and captured by the United States cannot be restored to the former owner on payment to the Secretary of the Treasury of the consideration received from the rebel government. *Opinion of Oct.* 3, 1865, 11 Op. 363.

5. The steamer St. Mary, or its proceeds, should not be returned to the claimant under executive sanction and authority. *Opinion of Jan.* 6, 1866, 11 Op. 416.

6. Where a steamer was seized by a military force in an insurrectionary State, and remained in such custody till the termination of hostilities, without an adjudication of a court of prize, and without being turned over to a Treasury agent: *Held* that the President might lawfully restore the vessel to the owner. *Opinion of May* 15, 1866, 11 Op. 484.

CAPTURED AND ABANDONED PROPERTY.

See also CLAIMS.

Property in a rebel city, occupied by the military authorities for the accommodation of our troops in garrisoning the city, cannot be brought as captured property within the operation of the captured and abandoned property acts. *Opinion of March* 6, 1867, 12 Op. 125.

CAVEAT.

Private or extrajudicial caveats lodged with the Commissioner of Loans, when founded on some specific claim or lien on the stock created by the proprietor himself, ought to be respected. *Opinion of Oct.* 20, 1828, 2 Op. 173.

CESSION OF JURISDICTION.

See also LANDS ACQUIRED FOR PUBLIC USES, II; PURCHASE OF LAND.

1. The United States cannot accept a cession of jurisdiction from a State coupled with a condition that crimes committed within the

limits of the jurisdiction ceded shall continue to be punishable by the courts of the State. *Opinion of Feb.* 27, 1857, 8 Op. 418.

2 The general act of Florida legislature, passed June 6, 1855, is a sufficient cession of jurisdiction over land purchased in that State by the Federal Government for public works. *Opinion of Sept.* 24, 1857, 9 Op. 94.

3. An act of the legislature of a State which gives a complete and unequivocal consent to the purchase of land therein by the United States for the erection of needful public buildings is such a cession of jurisdiction as is contemplated by the joint resolution of September 11, 1841. *Opinion of Dec.* 9, 1858, 9 Op. 263.

4. A cession of jurisdiction over land purchased by the United States by a constitutional convention of a State is not a consent to the purchase by the legislature of the State within the sense of the Constitution and the joint resolution of September 11, 1841. *Opinion of June* 15, 1868, 12 Op. 428.

5. The provisions of section 4661 Rev. Stat., viz, that "no light-house, beacon, public piers, or land-marks shall be built or erected on any site until cession of jurisdiction over the same has been made to the United States," do not apply to a movable beacon or bug-light which is not designed to be permanently fixed in any one place, but whose location is contemplated to be changed on the beach from time to time according to circumstances, these changes extending over a distance of half a mile. Those provisions are only intended to include structures whose location is of a fixed and permanent character. *Opinion of May* 16, 1879, 16 Op. 329.

CHECKS.

See also DISBURSEMENT OF PUBLIC MONEYS.

Checks given by paymasters are valid obligations of the Government, although dishonored for want of funds to the credit of the officers who issue them. *Opinion of April* 22, 1865, 11 Op. 216.

CHIRIQUI IMPROVEMENT COMPANY.

The Chiriqui Improvement Company, in establishing the validity of their title to certain lands, coal mines, and privileges in the provinces of Chiriqui, under a proposal to sell the same to the United States, must show (*a*) that the company, as incorporated by the legislature of Pennsylvania, is organized under its charter, and that the persons proposing to make the sale have a right to convey the property of the company; (*b*) the existence of the grant alleged to have been made by the province of Chiriqui by a properly authenticated copy of it; (*c*) that the provincial legislature from whom the company claim to have acquired title had power to make the grant from the supreme government, either through a provision of the constitution of New Granada, or by a special concession of the particular lands to the province; and (*d*) that the provincial legislature had clear authority to dispose of the mining rights claimed by the company, the presumption being that the sovereign authority over those rights is retained by the sovereign government. *Opinion of March* 14, 1859, 9 Op. 286.

CITIZENSHIP.

See also EXPATRIATION; PASSPORT.

1. Free negroes in Virginia are not citizens in the sense in which the term "citizen" is used in the acts regulating the foreign and coasting trade, so as to be qualified to command vessels. *Opinion of Nov.* 7, 1821, 1 Op. 506.

2. Indians are not citizens of the United States, but domestic subjects. *Opinion of July* 5, 1856, 7 Op. 746.

3. The general statutes of naturalization do not apply to Indians, but they may be naturalized by special act of Congress or by treaty. *Ibid.*

4. Indians and half-breed Indians do not become citizens of the United States by being declared electors by any one of the States. *Ibid.*

5. *Quære*, whether half-breed Indians may become citizens by voluntarily leaving their tribal connection, and without any special provision of law in their behalf. *Ibid.*

6. A free white person, born in this country of foreign parents, is a citizen of the United States. *Opinion of July* 18, 1859, 9 Op. 373.

7. A lady born in this country of American

parents married a Spanish subject residing here, but who was never naturalized, and with her husband and his child of three years of age, also born in this country, removed to Spain, where she lived till her husband's death: *Held* that the removal of the lady and her daughter to Spain, and their residence there, under the circumstances, were not evidence of an attempt on their part to expatriate themselves, and that they are still American citizens. *Opinion of Aug.* 6, 1862, 10 Op. 321.

8. A child born in the United States of alien parents, who have never been naturalized, is, by the fact of birth, a native-born citizen of the United States, entitled to all the rights and privileges of citizenship. *Opinion of Sept.* 1, 1862, 10 Op. 328.

9. Children born abroad of aliens, who subsequently emigrated to this country with their families, and were naturalized here during the minority of their children, are citizens of the United States. *Opinion of Sept.* 2, 1862, 10 Op. 329.

10. Children born here of alien subjects who have declared their intention of becoming citizens, are citizens of the United States. *Ibid.*

11. Free men of color, if born in the United States, are citizens of the United States, and if otherwise qualified are competent, according to the acts of Congress, to be masters of vessels engaged in the coasting trade. *Opinion of Nov.* 29, 1862, 10 Op. 382.

12. In the case of Madame Berthemy, the facts being that she was born in France, that her father at the time of her birth was a citizen of the United States, and that she married in France a French citizen, and continued after the death of her husband to reside in the country of her nativity: *Held* that she is a citizen of France, and not of the United States. *Opinion of Aug.* 13, 1866, 12 Op. 7.

13. A question as to status or citizenship arising in the United States is determinable by our own law; or, if it arose on the high seas, or anywhere out of the territorial jurisdiction of another country, it would be a question either under our own law or the public law, according to the circumstances under which the right was asserted or denied. *Opinion of Nov.* 26, 1867, 12 Op. 320.

14. Children born abroad whose fathers were, at the time of their birth, citizens of the United States, and had at some time resided therein, are American citizens under the provisions of the act of February 10, 1855, chap. 71, and entitled to all the privileges of citizenship which it is in the power of the United States Government to confer. *Opinion of June* 12, 1869, 13 Op. 90.

15. But if by the laws of the country of their birth such children are subjects of its government, it is not competent to the United States, by legislation, to interfere with that relation while they continue within the territory of that country, or to change the relation to other foreign nations which, by reason of their place of birth, may at any time exist. *Ibid.*

16. A woman born in the United States, but married to a citizen of France and domiciled there, is not "a citizen of the United States residing abroad" within the meaning of those words in the one hundred and sixteenth section of the act of June 30, 1864, chap. 173, and the thirteenth section of the amendatory act of March 30, 1867, chap. 169, relating to internal revenue. *Opinion of July* 12, 1869, 13 Op. 128.

17. All persons who were citizens of Texas at the date of annexation, viz, the date of the joint resolution of December 29, 1845, became citizens of the United States by virtue of the collective naturalization effected by that statute. *Opinion of March* 28, 1871, 13 Op. 397.

18. Citizens of Texas thus adopted into the citizenship of the United States classified and described. *Ibid.*

19. Persons born abroad who seek passports as citizens of the United States, founded on an alleged Texan citizenship at the time of annexation, may be deemed citizens of the United States and entitled to passports as such, should they be found to belong to any of the classes of Texas citizens here described. *Ibid.*

20. *Quære*, whether political duties or burdens, such as military service, might lawfully be imposed by Austria upon a person residing there who by birth is an American citizen, but who under the laws of that country (by having been born of Austrian parents only temporarily residing here) is also an Austrian citizen, without the consent of that person, or without his signifying by some act or declaration his will to be a citizen of that country. *Opinion of Dec.* 21, 1872, 14 Op. 154.

21. If he has voluntarily assumed the character of an Austrian citizen, however, and has

resided in Austria five years (see article 1 of the convention of September 20, 1870, with the Austro-Hungarian monarchy), it cannot be reasonably maintained by this Government that his Austrian citizenship, or the political obligations appertaining thereto, may be cast aside by him at pleasure, so long as he continues to reside within the jurisdiction of that country. *Ibid.*

22. A naturalized citizen who resides abroad has the same right to the protection of the Government, and stands upon the same footing in all other respects, as a citizen by birth residing abroad. *Opinion of Aug.* 20, 1873, 14 Op. 296.

23. Children born abroad of persons once citizens of the United States, but who have become citizens or subjects of a foreign power, are not citizens of the United States, nor, as such, entitled to their protection. *Ibid.*

24. A native-born citizen of the United States who has been naturalized in a foreign country, and thus become a citizen or subject thereof, is to be regarded as an alien; and he cannot reacquire American nationality except in conformity to the laws of the United States providing for the admission of aliens to citizenship therein. *Ibid.*

25. Authorities upon the construction of the second section of the act of February 10, 1855, chap. 71, reviewed, and the following conclusion deduced therefrom, viz: That any free white woman, not an alien enemy, who is married to a citizen of the United States is, by reason of her marriage, to be deemed a citizen of the United States, irrespective of the time or place of the marriage or the residence of the parties. *Opinion of June* 4, 1874, 14 Op. 403.

26. *Held*, accordingly, that an alien woman who has intermarried with a citizen of the United States residing abroad—the marriage having been solemnized abroad, and the parties after the marriage continuing to reside abroad—is to be regarded as a citizen of the United States within the meaning of said act, though she may never have resided in the United States. *Ibid.*

27. By a copy of the registry of births at Hamburg, in Germany, it is shown that Rudolph Carl Levy was born in that place on the 22d of February, 1853; and on the 10th of July, 1873, he was admitted to citizenship in the United States, under the name of Charles Levy, by the court of hustings of the town of Staunton, in the State of Virginia, as shown by the record of that court. Upon the question whether Levy should be recognized by the United States as a citizen thereof: *Advised* that the judgment of said court (it appearing to have jurisdiction in the matter of admitting aliens to citizenship, and there being no appeal from its decisions in such matter) is to be regarded as final and conclusive upon the facts in the case of Levy, and consequently that he should be recognized by the Government as a citizen of the United States. *Opinion of Dec.* 3, 1874, 14 Op. 509.

28. S., a Prussian subject by birth, became naturalized in the United States in 1854. About five years afterward he returned to Germany with his family, in which was a son four years old, born in the United States, and became domiciled at Weisbaden, where both father and son have since continuously resided. The son, who is now twenty years of age, having been called upon by the German Government to report for military duty, S. invokes the intervention of the United States legation at Berlin, on the ground that his son is by birth an American citizen, but declines, in behalf of the son, to give any assurance of intention on the part of the latter to return to the United States within a reasonable time and assume his duties as a citizen: *Held* (1) that, under article 4 of the treaty of 1868 with North Germany, the father must be deemed to have abandoned his American citizenship and to have resumed the German nationality; (2) that the son, being a minor, acquired under the law of Germany the nationality of his father, but did not thereby lose his American nationality; (3) that upon attaining his majority the son may, at his own election, return and take the nationality of his birth, or retain the German nationality acquired through his father; (4) yet that during his minority, and while domiciled with the father in Germany, he cannot rightfully claim exemption from military duty there. *Advised*, therefore, that the case presented does not call for interference on the part of the American Government. *Opinion of June* 26, 1875, 15 Op. 15.

29. While the Government of the United States with jealous care will protect its humblest citizen wherever found, yet it is not our duty to aid a young man of twenty years to es-

cape from military service in a government whose protection he has enjoyed since four years old, and where he has an acquired nationality which he does not propose to give up, and, when interrogated by the envoy of the American Government, declines even to suggest that he ever intends to return to the United States and reclaim the nationality and assume the duties of an American citizen. Protection from a government involves the reciprocal duty of allegiance and service from the citizen when needed. *Ibid.*

30. An alien woman married F., a naturalized citizen and resident of the United States, who died in 1860. In 1862 she married D'A., an alien who was domiciled in the United States, but who subsequently died without becoming a citizen thereof: *Held* that, by virtue of the provision of the statute embodied in section 1994 Rev. Stat., the claimant upon her first marriage acquired a permanent status of citizenship, which could be lost only as in the case of other citizens, and that this status was not affected by her subsequent marriage. *Opinion of Jan.* 23, 1877, 15 Op. 600.

CIVIL ENGINEER.

See NAVY, XI.

CIVIL WAR.

See also CAPTURE; PRIZE; REBELLION.

1. Civil war is where the people of a country are divided into hostile parties who take up arms and oppose one another by military force. *Opinion of May* 15, 1858, 9 Op. 140.

2. A revolutionary party, like a foreign belligerent power, is supreme over the country it conquers as far and as long as its arms can carry and maintain it. *Ibid.*

3. Although it has been doubted whether a mere body of rebellious men can claim all the rights of a separate power on the high seas without absolute or qualified recognition from foreign governments, there is no authority for a doubt that the parties to a civil war have the right to conduct it, with all the incidents of lawful war, within the territory to which they both belong. *Ibid.*

4. When, during the existence of a civil war in Peru, American vessels found a port of that country and points on its coast where guano is deposited in the possession of one of the parties to the contest, and procured, under its authority and jurisdiction, clearances and licenses at the custom-house to load with guano, they were guilty of nothing—having acted fairly in pursuance of the licenses—for which the other party to the civil war could lawfully punish or molest them afterwards. *Ibid.*

CLAIM AGENT.

1. It is competent to the head of a Department, as a measure for the protection of the public interests committed to his charge, to decline to recognize, or to suspend the transaction of business with, an agent or attorney for frauds and fraudulent practices attempted or committed by him in the prosecution of claims before the Department, and whose character is such that a reasonable degree of confidence cannot be placed in his integrity and honesty in dealing with the Government. *Opinion of Oct.* 4, 1869, 13 Op. 151.

2. The authority to pursue this course under those circumstances rests upon the very necessity that exists for its adoption as a safeguard against fraud in administering the laws relating to the settlement and payment of claims upon the United States. *Ibid.*

3. Besides, it is a just and necessary limitation upon the right of a party to be represented by an agent, and to select the agent by whom he will be represented, that he shall not employ a person offensive or dangerous to the other party with whom he is to deal. *Ibid.*

4. The head of a Department, however, is not invested with any authority over the professional conduct of claim agents for the correction of mere private grievances, corresponding with that possessed by the courts of law over attorneys practicing before them. *Ibid.*

5. Provisions of the eighth section of the act of March 2, 1861, chap. 88, conferring upon the Commissioner of Patents a similar power over the conduct of patent agents, considered. *Ibid.*

6. The head of a Department has authority to disbar (*i. e.*, decline to recognize or to trans-

act business with) attorneys practicing therein for misconduct. Opinion of Attorney-General on the same subject, in 13 Op. 151, approved. *Opinion of May* 13, 1880, 16 Op. 488.

CLAIMS.

See also ACCOUNTS; DAMAGES; PAYMENT.

I. *Generally.*
II. *Against Foreign Government.*
III. *Under Treaties with Foreign Nations.*
IV. *Under Indian Treaties.*
V. *Under Special Acts.*
VI. *Under Contracts.*
VII. *For Damages.*
VIII. *Services.*
IX. *Army Supplies.*
X. *Property Lost or Destroyed in the Military Service.*
XI. *Proceeds of Cotton Seized and Sold.*
XII. *From States in Insurrection.*
XIII. *Infringement of Patent.*
XIV. *Reimbursement for Expenditures.*
XV. *For Indian Depredations.*
XVI. *Of Colored Soldiers and Sailors.*
XVII. *Of States.*
XVIII. *Oaths in Support of.*
XIX. *Transmission of, to Court of Claims.*
XX. *Assignment of.*
XXI. *Settlement of.*
XXII. *Reconsideration and Readjustment of.*
XXIII. *Payment of.*
XXIV. *Of the United States.*

I. Generally.

1. The Government is not bound to satisfy a judgment against its agent when it does not fully appear that he was such agent, and where the avails of the property sued for were retained by him and were sufficient to indemnify. *Opinion of Jan.* 21, 1802, 1 Op. 99.

2. The term *expenses* in the resolve of Congress of June 20, 1780, in behalf of Bingham, means the money expended in and about the suit. *Ibid.*

3. A vessel, alleged to be Danish property, was seized by an American vessel as French property, on the south side of the island of St. Domingo. While awaiting examination under the American flag the vessel was again seized by a British ship: *Held* that the United States were not liable to indemnify the Danish owner. *Opinion of March* 11, 1802, 1 Op. 106.

4. The United States are not bound to make compensation to parties who have neglected to prosecute appeals in the courts invested with jurisdiction and power to administer relief. *Opinion of Feb.* 10, 1803, 5 Op. 692.

5. A receiver of captured property to be delivered to the true owners as they should be ascertained by Congress, and who converted the property and had the means of indemnifying himself, has no claim upon the United States for the payment of a judgment obtained against him, unless it expressly appears that such property came into his hands as agent for the United States. (See opinion of Jan. 21, 1802, 1 Op. 99.) *Opinion of March* 18, 1803, 1 Op. 127.

6. Where the Quartermaster-General agreed to pay $8,000 for a vessel to the owner on condition that the latter should deliver her in good condition at the mouth of the Apalachicola by a specified time, and the latter agreed to do so, "damages of the sea or being prevented by an enemy excepted," yet failed to deliver her in time, but, under a division order from General Jackson directing the Quartermaster-General to purchase the vessel "if to be had at cost here," he took possession of her without any consultation with the owner or agent, and sent her up the river with supplies for the Army: *Held* that by virtue of the conversion the United States ought to pay for her, not the stipulated price, but *quantum valebat*. *Opinion of Oct.* 20, 1818, 1 Op. 245.

7. By the settlement of a disputed line between New York and New Hampshire the owners of lands thrown into the latter State, and subsequently into Vermont, and the title being ultimately extinguished by a compromise for a pecuniary consideration, have no valid claim to indemnity from the Government. *Opinion of Oct.* 20, 1819, 1 Op. 320.

8. Where a contractor with the Government for Army supplies transferred to a firm—of which he had before that time purchased kerseys, which had been received into store in the United States arsenal—the Commissary-General's negotiable certificate for the same goods: *Held* that the firm is entitled to recover the amount of the certificate, notwithstanding the contractor may be upon his whole account a

defaulter to the Government. *Opinion of May* 4, 1821, 5 Op. 734.

9. Mrs. C. Thornton, of London, formerly of Northumberland, widow of Col. Presley Thornton, and devisee under his will of an annuity charged upon his estate in Northumberland and Culpeper, which estate subject thereto was devised to the testator's two sons in moieties, is entitled to certain arrears of such annuity, although she left this country in 1775 from political hostility to the principles of the Revolution; the estate having been partitioned among the heirs, and one moiety conveyed to another person or persons, and by him or them to the United States, and even though it may have been for the time suspended or extinguished by the confiscating and sequestrating laws of Virginia. *Opinion of Oct.* 31, 1821, 1 Op. 495.

10. Although the annuity is charged on the profits of the estate, it was clearly the testator's intent that it should be paid in any event and be charged on the land; and as the deed of the moiety of one of the two sons to the person from whom the United States derived their title refers to the will creating such annuity, the latter must be considered as taking title with notice that they were charged therewith. *Ibid.*

11. Such claimant is entitled to interest only from the time of filing her bill, it not appearing that she had an agent in this country to demand or receive payment prior thereto. *Ibid.*

12. The Isabella, having been condemned by the Supreme Court of the United States as a British vessel falsely and fraudulently covered by Spanish documents, and consequently held to be good prize of war, and a claim being made by Alonzo Benigno Munoz for reimbursement by Congress: *Held* that his title to a claim can be founded only on the admission of such a degree of corruption in the tribunals through which the case has passed as would make it the duty of the committee which admits his claim to direct their impeachment *Opinion of April* 24, 1822, 1 Op. 536.

13. Where a sutler of the Army administered upon the estate of certain deceased soldiers: *Held* that he was entitled, not as administrator but as creditor of such soldiers, to have his accounts examined by the accounting officers of the Treasury, and to be paid the amounts respectively ascertained to be due, if the balance due the soldier shall in each ca quate. *Opinion of June* 24, 1829, 2 (

14. Although the Government wi bringing home seamen who have charged in foreign ports, yet where a man received a seaman on board for tl of bringing him home, and brought half the way, when he voluntaril captain cannot justly claim full pay f age, but only a compensation for th he brought him. *Opinion of Nov.* Op. 468.

15. Where A. was employed to assi trict attorney of the District of Col the mayor of Washington and the ney, in a prosecution then pending party for murder: *Held* that he has a against the Government for compe his services. *Opinion of Jan.* 4, 1 495.

16. The half-pay allowed to of served in the Virginia line during tl tion, by act of July 5, 1832, chap. 1 be given when the officer accepts the of commutation. *Opinion of Marc* 2 Op. 555.

17. Where the lessee of the lead Galena and holder of a smelting l become indebted to the United Stat tain amount of lead for rent reserved to the superintendent, and deposite or warehouse for the use of the Uni and the account was placed in th Major Campbell for collection, who, confining himself to that duty, took ment of the mineral ashes, and pr smelt them, under the belief that h able to pay the rent due the Gover indemnify himself for a debt due hi lessee, from whom he subsequently veyance of the leased and smelting and all his other property in trust returned the account as paid, and tl himself accountable to the Governn ceiver, and afterwards delivered the l was mingled with other lead in the and finally, apprehending loss from action, applies to have the loss refun superintendent: *Held* that there is n except in the legislative department afford Major Campbell relief. *Opini* 8, 1834, 2 Op. 615.

18. If a third person receive a

draft in due course of business for a valuable consideration, with proper indorsements, and without notice that the payee or any bearer thereof parted with it unlawfully or improperly, he has a claim upon the Government for its amount. *Opinion of Jan.* 18, 1836, 3 Op. 30.

19. Yet if such third person have any notice that the draft was issued for public purposes, and that it was intrusted to an individual to present at the bank and receive the money thereon for those purposes, but who had lost it by gambling, or some similar misconduct, such notice defeats his claim upon the Government. *Ibid.*

20. No allowance for horses or other property impressed into the service of the United States, nor for any special damage done to individuals or their property by the troops of the United States or the enemy, can be allowed by the first section of the act of 28th May, 1836, chap. 82. *Opinion of Nov.* 8, 1836, 3 Op. 162.

21. This act does not extend to the pay and other allowances to be made to the militia or volunteers, which by the second section are placed on the same footing with those of militia and volunteers ordered into service by orders from the War Department. Of expenses incurred and supplies furnished not of the like nature with those specially named in the abstract, only those are to be allowed which were known to the military service, having reference, in the cases both of expenses and supplies, to the character of each corps. *Ibid.*

22. The claim of the city of Augusta for expenses incurred and supplies furnished on account of the public service for the defense of Florida comes within the act of May 28, 1836, chap. 82, and ought to be allowed. *Opinion of Nov.* 17, 1838, 3 Op. 388.

23. The board appointed (in execution of the provision of the act of March 3, 1839, chap. 93, making an appropriation "for paying the value of the horses and equipage of the Tennessee and other volunteers who have at any time been in the service of the United States in the Territory of Florida," &c.) to value the horses having also valued the equipage, and the same having been turned over to the United States with the horses, a portion of which were wanted by the commanding general for immediate service, the inference is warranted that the equipage was turned over with the horses within the meaning of the law. *Opinion of March* 26, 1840, 3 Op. 503.

24. Where the delivery of cargo belonging to the Government and discharge of the vessel took place short of destination, without the master's consent, in consequence of the interference of an assistant commissary-general, for which the Government was not responsible: *Held* that the claimant was only entitled to freight *pro rata*. *Opinion of Jan.* 11, 1843, 4 Op. 143.

25. Commutations for five years' full pay are not included in and provided for by the third section of the act of July 5, 1832, chap. 173. *Opinion of April* 8, 1844, 4 Op. 313.

26. By that section the Secretary of the Treasury is only required to adjust and settle the claims of certain regiments and corps for half-pay for life which had not been prosecuted to judgment against the State of Virginia, and for which the State is bound on the principles decided in the supreme court of that State in other cases. *Ibid.*

27. The question, moreover, is regarded as adjudicated, and therefore not properly open for examination except by Congress. *Ibid.*

28. The claim made in behalf of Virginia by Thomas Green, agent of that State, is just, and falls within the provisions of the second section of the act of July 5, 1832, chap. 173; and the balance of the appropriations made by that act would be applicable to the payment of it were it not that it has been carried to the surplus fund, from which it cannot be withdrawn except by act of Congress. *Opinion of April* 8, 1844, 4 Op. 315.

29. An invasion of the custom-house in Texas by citizens of Arkansas, and the violent abstraction therefrom of property, under a claim of title, however much to be disapproved and condemned, constitute no ground of claim against the United States. *Opinion of July* 9, 1844, 4 Op. 332.

30. The General Government can in no wise be held responsible for the acts of private trespassers. They must be punished in the tribunals established by law, or be prosecuted for the recovery of or value of the goods, either in the State or Federal courts. *Ibid.*

31. Under the act of August 23, 1842, chap. 192, and the joint resolution of the 30th April, 1844, the Secretary of War cannot direct the accounting officers to allow claims for supplies beyond the quantity to which the troops were

entitled under existing laws. The act and resolution must be read as *in pari materiâ*. *Opinion of Jan.* 4, 1845, 4 Op. 352.

32. The representatives of a lieutenant in a Virginia State regiment, afterwards transferred to the continental establishment, who in his lifetime obtained a judgment against said State for commutation of five years' full pay in lieu of half-pay for life, and received payment thereof in 1792, are not entitled, under existing laws, to be allowed a claim for further compensation for services rendered by their ancestor. *Opinion of June* 2, 1847, 4 Op. 590.

33. This claim was considered and rejected by the Department in 1833, on the ground that it had been paid. *Ibid.*

34. It is not provided for in the third section of the act of July 5, 1832, chap. 173, and cannot be allowed except under special authority from Congress. *Ibid.*

35. Congress having resolved that the claim of the representatives of Churchill Gibbs was provided for by the act of July 5, 1832, chap. 173, and the House of Representatives having again resolved to that effect, after the Executive Department had decided otherwise, it is now the duty of the Executive Department to liquidate it. *Opinion of March* 27, 1849, 5 Op. 82.

36. The acts of Congress of the 3d March, 1835, and 12th August, 1848, chap. 166, are legislative interpretations of the act of 5th July, 1832, chap. 173, and expressions of opinion that it was the purpose of the third section of the act of 1832 to provide for Virginia commutation claims for half-pay, as well as those for half-pay; and those legislative interpretations and opinions are binding on the Executive, and require the allowance of the present claim. *Opinion of March* 27, 1849, 5 Op. 83.

37. The Executive has no authority to allow the claim of Col. J. M. Cresey for disbursements made by him in organizing a regiment of volunteers during the war with Mexico, under the authority of Major-General Gaines; but the claim, being meritorious, is commended to the favorable consideration of Congress. *Opinion of May* 18, 1849, 5 Op. 102.

38. The joint resolutions of July 16, 1846, and March 3, 1847, and the act of June 2, 1848, chap. 60, require the troops for which disbursements should be made to have been mustered and received into service. *Ibid.*

39. The representatives of Thomas Armstead, a captain who served in a Virginia regiment in the Revolutionary war prior to 21st May, 1782, when he became a supernumerary, to the 3d of April, 1783, and who died 1st September, 1809, to whom the Virginia legislature allowed $2,400 in 1826 as commutation, without interest, and to whom Congress subsequently allowed half-pay from 21st May, 1782, to said 3d April, 1783, are not now entitled to have the account reopened and restated, so as to allow interest on the said commutation. *Opinion of Oct.* 31, 1849, 5 Op. 164.

40. The relatives of a deceased officer or soldier are not entitled, under the act of July 19, 1848, chap. 104, to receive three months' extra pay on account of services of the ancestor, unless the ancestor were thus entitled at his demise. *Opinion of Nov.* 2, 1849, 5 Op. 168.

41. Such claims rest upon the ground that they are his statutory representatives; and, as such, they can only take that which the deceased himself could have taken had he survived. And as those who did not engage for the war, for five years, or for any other specific period, and who were never honorably discharged, were not themselves entitled, their representatives have no valid claim. *Ibid.*

42. A claimant representing himself to have been impressed into the British service after the action between the Chesapeake and Leopard, in 1807, when Great Britain and the United States were at peace, and not stating what his conduct was during the action to save the ship, nor what was his behavior afterwards, does not bring his case within the provisions of the act of April 23, 1800, chap. 33. The claim of John Strahan, therefore, as the same now appears before the Executive Department, is inadmissible. *Opinion of Nov.* 20, 1849, 5 Op. 185.

43. The account of the Chickasaw Nation is to be considered now as having been properly opened and restated, and the balance found due by the accounting officers is properly chargeable to the appropriation for the subsistence and removal of the Indians. The contract with William M. Gwin, assigned to Corcoran & Riggs, is valid, and should be paid out of the fund otherwise payable to the Chickasaws. *Opinions of Jan.* 3 *and March* 7, 1850, 5 Op. 226, 233.

44. The claim of the administrators of Com-

modore James Barron, commander of the State navy of Virginia during the war of the Revolution, for commutation-pay and interest, should be allowed. This opinion is founded upon the judicial decisions of the courts in Virginia that officers of the navy of that State, during the Revolutionary war, who served to its close, were equally entitled with officers of their line to commutation-pay under the Virginia act of 1790, and upon reasons stated in other similar cases. *Opinion of Jan.* 31, 1850, 5 Op. 227.

45. The administrator of John Rush, a sailing-master in the Navy, who became insane whilst in the service, and was placed on half-pay in the hospital at Philadelphia, where he remained until his death, in 1837, but for whom payment was not made after the death of his father, in 1813, has a just claim on the Department for the arrearage of pay, although the name of the insane man was dropped from the Navy Register. But as there is no appropriation from which the payment can be made, an estimate of this claim should be presented to Congress, and an appropriation asked for to enable the Department to pay it. *Opinion of Feb.* 11, 1851, 5 Op. 298.

46. The Secretary of State may sanction the reimbursement of lieutenants of the Corps of Topographical Engineers for personal expenses incurred in the execution of the sixth article of the treaty of Washington of 1842, and in reconstructing the maps showing the boundaries under that treaty. *Opinion of Feb.* 14, 1853, 5 Op. 671.

47. The Government is not responsible for, and cannot be charged with, money paid by a purser to his successor in office, which money did not belong to it. *Opinion of March* 12, 1854, 6 Op. 358.

48. When the accounting officers of the Treasury, in settling the accounts of a disbursing officer of the United States, have allowed an alleged payment upon a genuine receipt of the party to whom the money purports to have been paid, the latter cannot be suffered to claim the money of the Government in his own name on the pretense that he gave the receipt without actually receiving the money; and if he be aggrieved, his remedy is against the disbursing agent of the Government. *Opinion of Nov.* 23, 1854, 7 Op. 40.

49. Certain questions propounded by the Secretary of the Treasury, arising upon the claim of Whitemarsh B. Seabrook and others, considered and answered. *Opinion of April* 29, 1858, 9 Op. 139.

50. In the matter of the claims of Commander Ringold and Lieutenant Harrison: *Held* that those officers are entitled to duty-pay under the sixth section of the act of 1857, chap. 12 (section 3, act of March 3, 1859, chap. 76). *Opinion of May* 9, 1859, 9 Op. 336.

51. Under the joint resolution of March 3, 1863, No. 32, the Secretary of the Navy has power to adjust an equitable claim for articles furnished for the marine service during the time specified in the resolution where the specific quantity to be delivered was not named in the contract, but where that quantity is capable of ascertainment. *Opinion of May* 18, 1863, 10 Op. 485.

52. A court—one "Provisional Justice" Smith—constituted under authority of General Saxton, at Beaufort, S. C., rendered a judgment against a Government contractor in an attachment proceeding instituted by a subcontractor. An execution having issued thereon to the provost-marshal of the district, it was found that the property attached had been used by Government officials in the construction of a naval dock. The subcontractor (plaintiff) claimed that he was entitled, on the settlement of the accounts at the Navy Department, to payment of the value of the property of the defendant which had been attached and afterwards taken for the use of the Government: *Held* that "Provisional Justice" Smith had no legal existence as a court, and that his judgment had no legal validity, and could not control or govern the action of the Navy Department upon the said accounts. *Opinion of Sept.* 12, 1864, 11 Op. 86.

53. The claim of William Ward, a resident of Norfolk, Va., for supplies furnished the Navy Department, may now be lawfully paid. *Opinion of Nov.* 21, 1856, 12 Op. 96.

54. The President advised that no ground exists for reversing the order of the Secretary of War disallowing the claim of Messrs. Snow, Coyle & Co. for publishing the evidence in the case of the assassination conspiracy. *Opinion of June* 5, 1867, 12 Op. 140.

55. No injunction exists which can restrain the claimant, Joseph Nock, from receiving the

full amount of the judgment recovered by him in the Court of Claims. *Opinion of Aug.* 7, 1868, 12 Op. 438.

56. The D., L. and N. Turnpike Company owned a turnpike in Kentucky, over which, during the late rebellion, large numbers of horses, mules, and wagons belonging to the United States, employed in transporting military supplies, were driven by the forces engaged in prosecuting the war; and for this use of their road the company were allowed and paid by the War Department one-half the rates of toll as established by the laws of the State, the company, however, receiving the same under protest, and claiming to be entitled to full rates of toll. Demand having since been made by the company for the difference between the amount thus received and the amount thus claimed: *Held* that this is substantially a claim to be paid for damages caused by the operations of war, and that under existing legislation no authority exists for allowing any part of it. *Opinion of June* 22, 1869, 13 Op. 107.

57. No government has ever admitted a strict legal obligation on its part to make full compensation for such injuries as are incidental to the actual operations of war. *Ibid.*

58. A steamboat belonging to a resident of Wheeling, Va. (now West Virginia), was taken by her owner before the rebellion to New Orleans, La., where he remained with her until May, 1861, when he left her in charge of an agent and returned to the former place. She was subsequently captured by a United States gunboat on Red River, brought back to New Orleans, then in possession of the United States forces, and turned over to and used by the military authorities there until November, 1862, when she was restored to her owner, who now claims compensation for her use under the joint resolution of December 23, 1869: *Held* that, waiving the question whether the boat was not at the time of her capture to be regarded as enemies' property, the claim is not within the purview of that enactment. *Opinion of July* 7, 1870, 13 Op. 281.

59. The proviso of that resolution is to be construed as if it read: "*Provided*, That such steamboats or other vessels were in the insurrectionary districts by virtue of an authority specially appropriate to vessels of the United States within districts in insurrection," &c. *Ibid.*

60. There is nothing in the resolution which warrants its extension to vessels in insurrectionary districts under a charter or contract between private persons, whether made before the rebellion or afterward, or made between rebels, enemies, or loyal persons, such as is ordinarily required for the hiring of vessels, but not such as was specially appropriate for vessels entering the insurrectionary districts. *Ibid.*

61. Claim for rent of property known as Kalorama, in the District of Columbia, occupied for military purposes during the late rebellion, being for the difference between the rate demanded and the rate already paid to claimant by the Government: *Held* not to be valid upon the facts presented. *Opinion of Jan.* 12, 1871, 13 Op. 370.

62. It appearing in the case of the steamer Nellie Baker that in 1864 a claim for the hire of that steamer was before the Quartermaster-General, and that there was then a discussion between him and the owners as to the amount due; that he finally adjudged the amount due to be $4,200; and that the owners, though dissatisfied, accepted this sum at the time as all that could be got upon their claim: *Held* that this action is conclusive so far as the Departments are concerned, such settlements having the character of final judgments. *Opinion of Jan.* 12, 1871, 13 Op. 372.

63. Claimant contracted to transport military supplies, for which service, by the terms of his contract, he was to be paid "according to the actual distance traveled from the place of departure to that of delivery, the distance to be indorsed on the bill of lading by the officer or agent receiving the supplies." Having performed his part of the agreement, claimant received payment according to the distances indorsed on the bills of lading by the proper officer, which were the reputed distances at the date of the contract. From surveys afterward made it appeared that the actual distances exceeded those indorsed as aforesaid, and claimant asks to be paid for the difference: *Held* that, there being no evidence that either party had in view, when the contract was entered into, any distances other than those which were then currently accepted,

the claim is not well founded. *Opinion of March* 20, 1871, 13 Op. 393.

64. In April, 1865, the marine dock at Mobile, Ala., with a quantity of lumber and other materials, the whole belonging to the Mobile Marine Dock Company, was seized by the military authorities and used in the Government service until in November, 1865, the materials having been consumed in the mean time, when the dock was turned over to the officers of the company. Claim being made by the latter for the use of the dock and for the value of the materials, &c.: *Held* that the claim originated during the war for the suppression of the rebellion, and that its settlement is prohibited by the act of February 21, 1867, chap. 57. *Opinion of Jan.* 2, 1872, 13 Op. 555.

65. A claim for money expended in defraying the expenses of a delegation of Cherokees visiting the capital by authority of the Government, in the year 1870, may be allowed out of the appropriation made by the resolution of July 13, 1870 (No. 110). *Opinion of June* 18, 1872, 14 Op. 55.

66. Giving to the act of July 25, 1866, chap. 241, granting lands to the State of Kansas to aid in building the Kansas and Neosho Valley Railroad, which road subsequently came into the ownership of the Missouri River, Fort Scott and Gulf Railroad Company, a natural and reasonable construction, the claim of that company to be allowed compensation from the Government for transportation performed over said road is inadmissible, notwithstanding there may have been no notice given by the Government to the company, previous to the performance of the transportation, that it was to be done at the latter's expense. *Opinion of July* 25, 1872, 14 Op. 69.

67. An internal-revenue officer while in pursuit of an escaped prisoner shot and killed the latter, for which the officer was indicted in a State court, tried, and acquitted; and having sustained a considerable outlay in his defense, he afterward presented at the Treasury a claim against the Government for reimbursement of the amount: *Advised* that there is no law authorizing the reimbursement. *Opinion of July* 26, 1872, 14 Op. 71.

68. In June, 1865, the Mobile and Ohio Railroad, being then in the possession of the military authorities of the United States, was, under a general order issued thereby, turned over to the company owning the road, to be worked by such company on its own account, subject to the condition that the company should "carry all Government freight at such tariff as may be established by the Quartermaster-General." Troops and Army stores were subsequently transported over the road, for which service, up to November 1, 1865, payments were made to the company at rates established by the Quartermaster-General, and receipts in full were given by the company therefor without protest: *Held* that no claim is admissible for additional compensation in respect of such service on the ground that the company was entitled to more than what was paid; the acceptance of the amount allowed by the military authorities and the receipt given therefor constituting a final settlement as between the Government and the company. *Opinion of May* 3, 1872, 14 Op. 592.

69. By charter-parties made in October, 1862, the steamers General Meigs and General Burnside were hired to the Government, to be used in the military service for the term of six months, commencing from the 15th of that month, at a per diem of $300 for each, with the privilege of purchase at a stated amount at the end of three months. On the 2d of February, 1863, the Quartermaster-General issued an order to purchase the steamers under the provisions in their charter-parties, the purchase to date as of the 15th of January previous. That order was not finally carried into effect until the 13th of May following, on which day bills of sale, transferring the steamers to the United States, antedated the 15th of January, 1863, were executed and delivered by the owners thereof, who also made out bills for the purchase-money, bearing the date last mentioned, and received payment of the same. The owners furthermore made out bills against the Government for reimbursement of expenses incurred in running the steamers during the period between the 15th of January and the 13th of May, and received payment thereof. A claim, however, was subsequently presented by them for compensation for the use of the steamers during that period, at the charter rate of $300 per diem, deducting the amount already received for reimbursement of running expenses: *Held*

that this claim, under the circumstances, has no validity. *Opinion of Aug.* 7, 1872, 14 Op. 84.

70. By the second section of the act of February 27, 1875, chap. 108, the allowances to be admitted in favor of the railway companies settled with under that act are limited to the following subjects: First, payments made by them in cash; second, credits authorized by the general course of the business regulations of the Departments for transportation performed. But no abatement or increase in the amount of either the one or the other is admissible. *Opinion of May* 27, 1875, 15 Op. 1.

71. The award made by the Postmaster-General in favor of George Chorpenning, December 23, 1870, under the joint resolution of July 15, 1870, was not in its nature binding upon the United States until paid, and might be rendered null by the action of Congress at any time prior to its payment. *Opinion of July* 23, 1875, 15 Op. 20.

72. Congress having, before payment thereof, by joint resolution of February 9, 1871, repealed the joint resolution of 1870, under which the Postmaster-General had acted, and by subsequent acts (see 16 Stat., 519, 572; 17 Stat., 82) forbidden payment to be made out of appropriations under control of the Post-Office Department, the award thereupon ceased to have any efficacy. It does not now constitute a valid foundation of claim, and an action would not be maintainable thereon. (See NOTE, 15 Op. 26.) *Ibid.*

73. Former opinion in the case of the Biddle Manufacturing Company referred to (see opinion of August 2, 1875), and for reasons stated *advised* that payment of the claim be suspended for a reasonable time, say thirty days. *Opinion of Aug.* 19, 1875, 15 Op. 34.

74. Under section 7 of the act of March 2, 1867, chap. 169, and section 39 of the act of June 6, 1872, chap. 315, also the appropriation act of March 3, 1875, chap. 129, John D. Sanborn is entitled to such sums only as the Commissioner of Internal Revenue (within the limit of the appropriation) has agreed to pay, and the payment whereof is approved by the Secretary of the Treasury, for services of the following description, viz: "For detecting and bringing to trial and punishment persons guilty of violating the internal-revenue laws, or conniving at the same, in cases where such expenses are not otherwise provided by law." *Opinion of March* 27, 1876, 15 Op. 88.

75. The independent action of each of those officers (the Commissioner and the Secretary) is necessary to warrant payment; neither can delegate to the other his powers. *Ibid.*

76. In the case of John D. Sanborn, upon examination of section 7, act of March 2, 1867, chap. 169 (section 3463 Rev. Stat.); act of July 20, 1868, chap. 176; act of March 3, 1869, chap. 121; act of April 10, 1869, chap. 15; act of July 12, 1870, chap. 251; act of March 3, 1871, chap. 113; section 1, act of May 8, 1872, chap. 140 (section 256 Rev. Stat.); section 39, act of June 6, 1872, chap. 315; section 1, act of March 3, 1873, chap. 226; section 1, act of June 19, 1874, chap. 328; and section 1, act of March 3, 1875, chap. 129: *Held* that the offer of "a reward for taxes recovered by reason of information furnished by the claimant," contained in Treasury Circulars No. 99, No. 99 revised, and No. 99 second revision, was authorized by law. *Opinion of July* 5, 1876, 15 Op. 133.

77. But no rate of compensation for information furnished being established by those circulars, the rate fixed by the Commissioner of Internal Revenue must in each separate case have the approval of the Secretary of the Treasury in order to warrant payment. *Ibid.*

78. Previous to the act of June 22, 1870, chap. 150 (sections 363–366 Rev. Stat.), C. & W. were retained, with the approbation of the Solicitor of the Treasury, to defend certain suits brought against R., formerly collector of the port of New York, for acts done by him officially. Services were rendered under this retainer between September, 1873, and April, 1875, which remain unpaid for: *Held* that the Treasury Department is authorized to settle and pay the claim for these services. *Opinion of Sept.* 26, 1876, 15 Op. 168.

79. The Continental Bank-Note Company of New York contracted to furnish and deliver to the Post-Office Department for the term of four years, commencing May 1, 1873, all the adhesive postage-stamps which might be required by the Department, and agreed to keep on hand at all times a stock of stamps sufficient to meet all orders of the Department. For the stamps delivered in pursuance of the agreement the company were to be paid at a certain rate per thousand, which was to be "full compensation for everything required to be done or fur-

nished" under the contract. On the 24th of April, 1877, just before the contract expired, a new agreement was made with same company, to commence on May 1, 1877, by which the stamps were to be furnished at a lower rate. At the expiration of the first contract a surplus stock of stamps remained on the company's hands, which were delivered in fulfillment of orders under the second contract, and for which the company claims an allowance at the rate fixed in the first contract: *Held* that the claim is inadmissible, and that the company should only be paid therefor according to the rate fixed in the second contract. *Opinion of Oct.* 24, 1877, 15 Op. 382.

80. The Chesapeake and Ohio Railroad Company, being under no obligation by contract or otherwise to convey the mail from Charlottesville to the University of Virginia (at which point the company several years ago discontinued its station, and has since declined there to receive or deliver passengers, freight, or mails), is entitled to the sum of $1,850 withheld from its pay as a mail carrier to defray the expense of that service. *Opinion of Nov.* 19, 1877, 15 Op. 397.

81. In 1871 the Secretary of War, under authority derived from section 7 of the act of March 3, 1871, chap. 116, entered into a contract with P. for the construction of a telegraph line from Yankton to Fort Sully, in Dakota Territory, upon the completion whereof to the satisfaction of the Secretary of War he was to be paid at the rate of $8,000 per 100 miles. All the money so paid was to be refunded to the United States in the use of the telegraph line, and until so refunded it was to constitute a lien upon the line in favor of the United States. The entire line having been completed to the satisfaction of the Secretary of War, and P. having been paid all that was due him under the contract except $3,500, the latter, in April, 1878, sold and conveyed the line to S., and for a valuable consideration agreed with S. to abandon and release, and actually did release, to the United States all his unpaid claim on account of constructing said line. Some time previous to this transfer, however, P. had placed his claim for the $3,500 in the hands of certain attorneys for collection, agreeing to allow them 25 per cent. of the amount collected, and giving them an irrevocable power of attorney to prosecute and settle the claim. And in August, 1878, he filed his petition for the benefit of the bankrupt act, including in his schedule of assets the claim for $3,500 against the United States. *Held* that the transaction between P. and S., ending in the relinquishment of the claim for $3,500 (whereby the latter was relieved of an obligation to refund, in telegraphing, a sum of money which, if paid by the United States, would constitute a lien upon his property), was valid, and that such relinquishment operated as a bar to the collection of the claim by P., or his assignees in bankruptcy, or his said attorneys. *Opinion of Dec.* 6, 1878, 16 Op. 228.

II. Against Foreign Government.

82. The Secretary of State must decide according to his own discretion whether he will press the claim of a citizen of the United States upon the attention of a foreign government. *Opinion of May* 23, 1859, 9 Op. 338.

III. Under Treaties with Foreign Nations.

83. A Portuguese brig had been captured by a French schooner, and, thirteen days afterwards, recaptured by an American vessel and taken to St. Kitts, where she was adjudged to be restored to the owner on payment of salvage: *Held* that the United States were not liable, under the French treaty, for property thus recaptured. *Opinion of May* 26, 1802, 1 Op. 111.

84. A French vessel was captured and condemned as lawful prize prior to the treaty of September 30, 1800. One moiety of the proceeds of the vessel was paid to the United States, and the other to the captors after the signing of the treaty. Subsequently the moiety paid to the United States was restored to the claimants by decree of the Supreme Court: *Held* that the Government was not liable to pay the claimants the other moiety. *Opinion of June* 17, 1802, 1 Op. 114; also *Opinion of June* 25, 1802, *ibid* 119.

85. Demands for freight where individuals may have transported articles for the French Government, or for its citizens, as they are within no positive provisions of the treaty, cannot be sustained; the United States in no event and on no principle being bound to protect such claims. *Opinion of Nov.* 15, 1803, 1 Op. 136.

86. The commissioners under the Spanish treaty allowed Mr. Cathcart a sum of money, which, in his memorial to them, he stated *he alone* was entitled to receive; and it afterwards appeared that there were other claimants to the money: *Held* that it was a case in which it was expedient to respect the injunction of the court directing the officers of the Treasury not to pay the money till the case was judicially determined. *Opinion of July* 27, 1824, 1 Op. 681.

87. The Spanish owners of certain negro slaves who were shipped from Havana for Pensacola in an American vessel, which was captured under the guns of the fort at Barrancas, then occupied by an American force under the command of Col. G. M. Brooke, and whilst proceeding to adjudication were seized, with the vessel, by a revenue vessel and carried into the port of Mobile, where restitution of the slaves was awarded, &c., and the vessel condemned, have not a claim embraced by the provisions of the treaty with Spain. *Opinion of March* 31, 1829, 2 Op. 198.

88. The United States are bound to pay the Spanish inhabitants of Florida the value of slaves carried away or killed by the troops of the United States shortly prior to the treaty with Spain of 22d February, 1819. *Opinion of Dec.* 18, 1838, 3 Op. 391.

89. Remuneration should also be made for the services of such slaves as have been restored to their owners during the period of time their owners were deprived of their services. *Ibid.*

90. The Secretary of the Treasury may examine into all the facts and circumstances which constitute the grounds upon which a judgment for losses has been rendered, and determine upon the whole case whether the decision of the judge is just. *Opinion of June* 17, 1841, 3 Op. 635.

91. The decision of the judge in such a case is not analogous to the award of an arbitrator; and if it were, the United States have not agreed to be bound by it. *Ibid.*

92. The law has conferred upon the Secretary of the Treasury in such cases a jurisdiction as plenary to decide upon the whole case as upon the judge himself. *Ibid.*

93. The Secretary of the Treasury, however, has no legal power to recommit a case to a judge for rejudication. *Ibid.*

94. By the last clause of the ninth article of the treaty of 1819 with Spain, and the acts of March 3, 1823, chap. 35, and June 26, 1834, chap. 87, the Secretary of the Treasury is required to pay the claims for injuries caused by the military operations of 1812 and 1813, on which a favorable report may have been made by the superior court of Saint Augustine, where, upon examination of the decision and the evidence on which it is founded, he shall deem the same to be just. *Opinion of Oct.* 25, 1841, 3 Op. 677.

95. In these cases the examination of the judge is to enlighten the mind of the Secretary, as the verdict of a jury in a feigned issue is to enlighten the conscience of the chancellor; and his decision is simply *arbitrium boni viri*, and not conclusive in any degree upon the Secretary. He must, nevertheless, look into the whole matter, and ascertain for himself whether the Government is liable, and to what extent. *Ibid.*

96. If the case be one of injury by the military operations referred to, in which no ordinary care of the proprietor or his agents and no ordinary goodness of the property supposed to have been injured would have guaranteed it against the alleged injuries, it is within the treaty, and the claimant is entitled to his damages. *Ibid.*

97. In respect to the damages, the Secretary ought to be satisfied that the consequences which are alleged to have ensued upon the trespasses in question were no more than what, in the ordinary course of things, would be expected to be caused by them; that is, that after they occurred there was no laches on the part of the owner in his efforts to repair them, and that the evils, whatever they were, were not aggravated by some defect peculiar to the character and condition of his property. *Ibid.*

98. The Secretary of the Treasury has power to review decisions of the superior court of Florida upon claims presented under the treaty of 1819 with Spain, and the acts of March 3, 1823, chap. 35, and June 26, 1834, chap. 87, and to pay the amount that he may adjudge to be due, the awards of the judge not being in law conclusive thereon. *Opinion of Dec.* 9, 1843, 4 Op. 286.

99. The acts of March 3, 1823, chap. 35, and June 26, 1834, chap. 87, were both designed for the single purpose of carrying out the ninth

article of the treaty of 1819 with Spain, and should be read as *in pari materiâ*. *Ibid.*

100. The only authority vested in the Secretary to pay these claims is contained in the act of March 3, 1823, chap. 35, and can be exercised only under the restrictive proviso that he is satisfied that they are just and equitable. *Ibid.*

101. The Secretary is not authorized to allow interest on these claims, it not having been the usage of the Government to do so; nor does its duty to the claimants under the circumstances require it. *Ibid.*

102. Claims upon the Government for injuries sustained by Spanish officers and individual Spanish inhabitants during the military operations of the American Army in Florida, preferred under the ninth article of the treaty of 1819 between the United States and Spain, are required to be established judicially; yet the acts of Congress passed to carry that article of the treaty into effect do not make the decisions of the judges of the superior courts at Saint Augustine and Pensacola conclusive in respect to them. *Opinion of April* 16, 1851, 5 Op. 334.

103. Congress, in providing a tribunal for the adjudication of these claims, deemed it compatible with the public interest to repose a part of the judicial authority in the judges of the Territorial courts, and a part of it in the Secretary of the Treasury. *Ibid.*

104. The judges were required to report their decisions and the evidence on which they were founded to a tribunal of revision (the Secretary of the Treasury), who, on being satisfied of their justice, and of their being within the provisions of the treaty, is required to pay them. The tribunal created for their adjudication, therefore, consists of the judges and the Secretary. *Ibid.*

105. It is not the intention of Congress to limit the revisory power of the Secretary of the Treasury to questions of jurisdiction, but to extend it to the merits. *Ibid.*

106. The acts of Congress are not in conflict with the treaty with Spain; but if they were, the treaty must yield to them. *Ibid.*

107. If the revisory power cannot be lawfully exercised, the Secretary's authority to pay is invalid. *Ibid.*

108. The Secretary of the Treasury cannot allow the interest on these claims awarded by the Florida judges consistently with the long-settled construction of acts of Congress applicable to the subject. A long series of uniform decisions, adverse to the allowance of interest on this species of claims, must be respected as having the effect and force of law. *Ibid.*

109. The extraordinary expenses of a party incurred in living at Saint Mary's, whither he retired after the destruction of his property in Florida, are a matter too remotely consequential to be the proper subject of damages under the ninth article of the treaty of 1819 between the United States and Spain. *Opinion of June* 8, 1854, 6 Op. 530.

110. In virtue of the acts of Congress which provide for the execution of the ninth article of the treaty between the United States and Spain for the cession of Florida, which awards damages in certain cases to inhabitants of Florida, the Secretary of the Treasury has lawful authority to determine whether the awards of the judge of the district court of Florida are "just and equitable" or not, and to allow or disallow the same accordingly, at his discretion. *Opinion of June* 9, 1854, 6 Op. 533.

111. The decision of preceding Secretaries of the Treasury that interest is not allowable on such claims is to be considered as *res adjudicata*, and binding on the present Secretary. *Ibid.*

112. The Secretary of State requested to furnish additional information in regard to the claim of R. W. Gibbes. *Letter of March* 30, 1867, 12 Op. 131.

113. The claim of R. W. Gibbes having been duly referred to the board of commissioners constituted under the convention with New Granada of September 10, 1857, and submitted to an umpire authorized by that convention, who reported his award during the existence of the board, but payment of which was suspended at the Treasury by request of the Secretary of State, and the case afterward referred, without the claimant's consent, to the commission constituted under the convention of February 10, 1864, with the United States of Colombia as the representative of the late republic of New Granada: *Held* that by the submission of the claim to this commission in the manner stated the claimant was not divested of his rights against New Granada under the award of the umpire aforesaid. *Opinion of April* 10, 1869, 13 Op. 19.

114. The award not having been vacated, opened, or set aside during the lifetime of the former commission or board, and the claimant having done nothing since to waive his rights thereunder, it should be treated by our Government as a valid and conclusive ascertainment of his claim against New Granada. *Ibid.*

115. But under the seventh section of the act of February 20, 1861, chap. 45, the claimant, in order to receive payment at the Treasury of the amount awarded to him, is required to produce a certificate of the board of commissioners in his favor. *Ibid.*

116. The Secretary of the Treasury, by the acts of March 3, 1823, chap. 35, and June 26, 1834, chap. 87, was invested with authority to revise the decisions of the judges when made *in favor* of claimants under the ninth article of the treaty with Spain of February 22, 1819, and from his action thereon the law provided no appeal. The President cannot interpose to change the result of the action of the Secretary. *Opinion of Nov.* 8, 1878, 16 Op. 200.

117. Opinion of November 8, 1878 (16 Op. 200)—namely, that the President cannot interfere to change the action of the Secretary of the Treasury upon the decisions of the judges under the ninth article of the treaty with Spain of February 22, 1819, for the reason that the acts of March 3, 1823, chap. 35, and June 26, 1834, chap. 87, provide an appeal from the judges' decisions to the Secretary of the Treasury, and to that officer only—reaffirmed. *Opinion of May* 2, 1879, 16 Op. 317.

118. Certain questions touching the duties and proceedings of the judges in regard to claims under said treaty, and the powers and action of the Secretary of the Treasury relating to the same claims, &c., considered and answered; and, upon view of the whole matter, *held* that those claims have been more than a quarter of a century settled and determined so far as they can be by the Executive Department of the Government. *Ibid.*

IV. Under Indian Treaties.

119. The source of the claims of the people of Georgia, under the treaty of Indian Spring, was wrongs done by the Creek Nation to them prior to 1802, consisting partly in the destruction of their property, and partly in the seizure, carrying away, and detention of other property, such as negroes, horses, &c.; but by the several treaties, agreements, and the award of the President they have been disposed of. *Opinion of July* 28, 1828, 2 Op. 110.

120. The people of Georgia had no claim on the Creek Nation for property destroyed prior to the date of the treaty of Colerain; but they had for property destroyed between the date of that treaty and the 30th of March, 1802, so far as the same was not satisfied under the provisions of the act of May 19, 1796, chap. 30, to regulate trade and intercourse with the Indian tribes and to preserve peace on the frontiers, and the act of March 3, 1799, chap. 46, under the same title, subject to any set-off for claims of the same description within the same period which the Creek Nation might be able to establish on their part, and which were not satisfied under the provisions of the said acts. They are also entitled to claim for the issue of all the females whose mothers ought to have been delivered up; but not to interest. *Ibid.*

121. Claims once passed upon and adjusted by the President, under the treaty of Indian Spring, cannot be reconsidered by his successor. *Ibid.*

122. By the treaty with the Ottawas, concluded February 18, 1833, the United States absolutely agreed with the Indians to pay a certain sum ($10,890) to Mr. Forsyth, and they are bound to execute the treaty as made without requiring proof of the justice of the claim. *Opinion of April* 29, 1833, 2 Op. 562.

123. Payment of the claims of the citizens of Georgia under the Creek treaty of 1821, and the act concerning them of June 30, 1834, chap. 145, may be made by the President to the State of Georgia for the use of the claimants. *Opinion of Dec.* 20, 1834, 2 Op. 691.

124. The President may lawfully authorize the proper officers of the government of Georgia to settle and adjust these claims, and may impose any limitation or restriction he may judge reasonable on the receipt of claims, so as to bar any which may not have been presented either to the proper authorities of that State or to the persons appointed by the United States to make the investigations. *Ibid.*

125. Claims for professional services under the treaty of 1836 with the Cherokees must be for services of a lawful nature, and performed at the instance and request of the acting authorities of the nation. *Opinion of April* 20, 1837, 3 Op. 207.

126. Sixty thousand dollars is the sum appropriated by that treaty, and constitutes the whole amount which can be paid by the United States thereunder for the claims of citizens for services rendered the Cherokee Nation. *Ibid.*

127. Claims under the Cherokee treaty of 1836 were to be examined and adjudicated by commissioners to be appointed by the President, by and with the advice and consent of the Senate, and their decisions were to be final. *Opinion of Aug.* 27, 1838, 3 Op. 368.

128. Claimants under the tenth article of the treaty of 1836 who presented their demands to the first board, and received their due proportion of the $60,000 therein provided for services rendered the Cherokee Nation, are not entitled to any further allowance from the present board. *Opinion of July* 17, 1847, 4 Op. 613.

129. The appropriation of $60,000 in the tenth article of said treaty was in full discharge of all obligations in that respect assumed by the United States. *Ibid.*

130. The claim of the Board of Commissioners for Foreign Missions for their missionary establishments in the country ceded to the United States by the Cherokee treaty of 1836 cannot be paid and properly charged to the Cherokee Nation or deducted out of their funds held by the United States, without the adjudication and certificate of the board of commissioners provided for in seventeenth article of the treaty. *Opinion of Oct.* 9, 1850, 5 Op. 268.

131. The valuation of the agents alone is not sufficient. The agents to make the valuations were convenient auxiliaries to the board of commissioners appointed by the President under the seventeenth article of the treaty; but they are not substitutes for that board. *Ibid.*

132. The opinion given on the 9th October, 1850 (5 Op. 268), in regard to claims under the Cherokee treaty, does not conflict with a previous opinion of the Attorney-General, of July 7, 1846 (4 Op. 500), and it is hereby affirmed. *Opinion of March* 4, 1852, 5 Op. 515.

V. Under Special Acts.

133. The act of 8th May, 1820, chap. 77, for the relief of the legal representatives of Henry Willis, does not contemplate their entering town lots in satisfaction of the lands granted them. *Opinion of Feb.* 11, 1823, 5 Op. 752.

134. Where a merchant vessel was detained by the agent of the United States at Buenos Ayres, and by him sent to the United States, and an act of Congress was subsequently passed directing the actual loss to the owner to be ascertained and paid, and the Fifth Auditor had disallowed a portion of the items claimed: *Held* that the owner is entitled only to the actual loss sustained. *Opinion of May* 20, 1837, 3 Op. 217.

135. The loss of the use of a vessel thus detained, during her detention, was the first and most direct consequence of that detention; the damage occasioned thereby is not constructive and consequential, but actual, positive, and real. *Ibid.*

136. The Auditor may adopt the principle of difference in value, or demurrage, as the standard of his action, adding thereto, in either case, such additional allowances as will meet the actual loss of the party. Where the difference in value is adopted as the standard, interest and personal and other expenses are to be added; where the demurrage is the standard, all necessary expenses not relating to the use or management of the vessel are to be allowed in addition. *Ibid.*

137. In examining the claim of C. F. Sibbald, under the act of August 23, 1842, chap. 200, the Third Auditor is to ascertain the actual damages sustained by the claimant, but nothing like exemplary or vindictive retribution is admissible. *Opinion of Nov.* 12, 1842, 4 Op. 112.

138. The damages must be such as the claimant would be entitled to recover upon the principles of law as applicable to other cases. *Ibid.*

139. By those principles no damages can be allowed but such as directly flow, in the natural and ordinary course of things, from the trespass or omission. Distant and accidental consequences, however they may aggravate the claimant's loss, are to be laid out of the question. *Ibid.*

140. Neither can vague surmises and calculations of the fruits of projected enterprises be taken into the account; the damages must have been directly *caused*, not merely occasioned, by the interference of the agent of the United States. *Ibid.*

141. Whatever agents may have done beyond their instructions they did in their own wrong, and the Government is not responsible. *Ibid.*

142. As the act of 24th March, 1834, chap. 23, for the relief of Philip Hickey, requiring the Third Auditor to ascertain the value of the timber taken from his lands by the United States troops, and for which he claims damages, does not define what tract of land the timber was cut from, it is competent for the Auditor to refer to the report of the committee which accompanied the bill, and the documents, as *prima facie* evidence on this point; and if they fail to show the extent of the tract, he may resort to such other proof as shall be satisfactory. *Opinion of April* 7, 1846, 4 Op. 469.

143. Congress having by the act of March 3, 1849, chap. 100, made an appropriation to pay the "balance" due Ebenezer Warner for constructing a light-house at White Fish Point, on Lake Superior, after he had been paid the price stipulated in his contract, and after he had petitioned that body for a further allowance on account of his having been obliged to reconstruct some portion of the tower, which had been riven by lightning during the progress of the work, it must be inferred that the term "balance" was used not with reference to the contract price, but in connection with the additional expenditure caused the contractor by a calamity which he could not avert. *Opinion of May* 8, 1849, 5 Op. 94.

144. The appropriation is due to the claimant; Congress designed it to be paid him; and there is no discretion left the accounting officers of the Treasury to disallow it in whole or in part. *Ibid.*

145. Under the resolution of Congress of March 3, 1849 (No. 21), respecting the claim of A. G. & A. K. Benson, arising out of contracts made with the Navy Department for the transportation of naval stores to and upon the Pacific, the Secretary has authority as well to pay as to adjust it. *Opinion of July* 3, 1849, 5 Op. 126.

146. The charter-party claim, though not previously made, if arising out of the contracts mentioned in the resolution, is embraced by it. *Ibid.*

147. The amount which may be ascertained to be due is payable out of, and chargeable to, the appropriation for the current year for co tingent expenses for transportation. *Ibid.*

148. The amount of $6,892, allowed by t Secretary of the Navy on account of the clai of A. G. & A. K. Benson against the Navy D partment, may and should be paid from t appropriation for the year ending 30th Jun 1850, for contingent expenses that may accr for freights and transportation. *Opinion July* 9, 1849, 5 Op. 132.

149. The act of 11th March, 1852, chap. 1 for the relief of Lieutenant-Colonel Mitche does not entitle him to indemnification for e penses sustained in his efforts to procure t passage of said act, nor for loss of credit c casioned by a suit being brought against hi for matters done under color of office; but t Secretary of the Treasury will be justified refunding to him the taxable costs and t reasonable counsel fees incurred in the defen of such suit. *Opinion of Sept.* 9, 1852, 5 O 623.

150. An Indian agent while in the servi was robbed and murdered. He was behind his accounts, but Congress, taking no notice these facts, by act of March 3, 1857, chap. 14 directed that his widow should be paid $2,0 as indemnity for the money of which he w robbed and as pay for his undrawn salar *Held* (1) that the widow is entitled to t whole $2,000, Congress having declared th she should have it; (2) that his sureties m nevertheless deduct the amount of his undraw salary from the amount for which it may her after appear that they are liable. *Opinion June* 9, 1857, 9 Op. 43.

151. A person to whom Congress has, by special act, directed the payment of a certa sum in satisfaction of an acknowledged de has an absolute right to the money, which executive officer has authority to resist. *Opi ion of July* 21, 1858, 9 Op. 198.

152. The joint resolution of June 15, 186 relating to the settlement of the account of V H. De Groot, makes the Secretary of War judge between De Groot and the Governmen with power to see him paid the money actuall expended by him, and to indemnify him f such other losses, liabilities, and damages he had suffered or incurred. *Opinion of Sep* 20, 1860, 9 Op. 480.

153. Congress having declared that he shoul

be paid his expenses, the Secretary has no authority to inquire whether he had any legal right to that reimbursement or not, but simply to ascertain the amount. *Ibid.*

154. In ascertaining the other losses, the Secretary is confined to the principles of justice and equity, and cannot make an allowance for anything but an infraction of his legal rights. Justice is law. Equity is law, with that modification of legal strictness which a chancellor administers; but it never includes the recognition of any essential right which the law does not sanction. *Ibid.*

155. If De Groot had a valid subsisting contract which the Government repudiated without cause, he is entitled to all the gains he would have made by its completion. *Ibid.*

156. The Secretary of the Interior has legal power to define the principles on which the accounting officers of the Treasury should settle and adjust the accounts of Anson Dart, late superintendent of Indian affairs, under the act of June 16, 1860, chap. 145, passed for his relief, which directs the proper accounting officers "to settle with him on principles of equity and justice." *Opinion of Oct.* 8, 1864, 11 Op. 109.

VI. Under Contracts.

157. A vessel was chartered to the Navy Department for the purpose of carrying stores to Malta and Syracuse, without stipulation in the charter-party to furnish any particular or special papers, the voyage and risk being fixed by the charter-party and freight charged accordingly, and was captured by a Spanish privateer, on the ground that the vessel was carrying naval stores to the port of an enemy of Spain: *Held* that the owner of the vessel has no legal claim against the United States for the loss. *Opinion of July* 20, 1807, 1 Op. 162.

158. The Attorney-General declines to vary his opinion previously given relative to the claim of Messrs. Bowie & Kurtz. The validity of the claim must depend upon the facts concerning the extension of the voyage beyond the limit of the original engagement, and without the consent of her owners. *Opinion of March* 9, 1818, 5 Op. 708.

159. The President is authorized to allow the claim of Messrs. Bowie & Kurtz, agents of the owners of the ship Allegany, for reasonable freight from Algiers to Gibraltar. *Opinion of Sept.* 24, 1821, 5 Op. 740.

160. To determine what is meant by the word "reasonable," the Secretary of State will appeal to the best sources of such information. *Opinion of Oct.* 26, 1821, 5 Op. 741.

161. The owners of a steamboat chartered to take troops and stores from Pittsburgh to Fort Smith, on the Arkansas River, at $230 per day until discharged, and which, after having been discharged, was detained at Cincinnati, on its way back, on account of low water, are not entitled to pay for that detention. *Opinion of Aug.* 7, 1842, 4 Op. 83.

162. The United States had nothing to do with the steamboat after the charter-party was satisfied with the landing of the passengers, or the discharge thereof by the assistant quartermaster. *Ibid.*

163. Where a vessel was chartered by the United States for three months, and longer if required, at $900 per month, to transport a cargo from Philadelphia to the Island of Lobos, at the cost and charges of the owners, who covenanted that she was seaworthy, &c., and, having received her freight, proceeded as far as the Delaware Breakwater, where she sunk and lost the entire cargo, and about two months after was raised and tendered to an agent of the Government at Philadelphia for the purpose of fulfilling the charter-party, and the owners having received payment from the date of contract until she went down, making claim, under the charter-party, for freight afterwards: *Held* that the claim was not admissible. *Opinion of July* 24, 1848, 5 Op. 3.

164. There having been no cargo to be forwarded after the wreck, and it being impracticable to raise and repair the vessel in season to reach the place of destination before the expiration of the time stipulated for the service, it cannot be maintained that the subsequent tender was equivalent to performance, nor constituted the ground of any valid claim for freight. *Ibid.*

165. Where a vessel was chartered by the United States for a period of not less than three months, to be employed in transporting troops, animals, and stores to and from such places, ports, and roadsteads in the Gulf of Mexico as might be required, at $100 per day from a certain date to her sailing for the island

of Lobos, and $3,000 for the run from Brazos Santiago to the said island, where twelve days were to be allowed for unloading, and after that time to be paid for at the rate of $100 per day for the balance of the three months, at the expiration of which she was to be discharged; but, having arrived at Lobos, was immediately ordered to Vera Cruz, where her cargo was discharged; and claim being made for the per diem allowance after she left Lobos: *Held* that it is very clear that the owners became entitled to $100 per day during the whole period of the three months, except the time occupied in the run from Brazos Santiago to the Island of Lobos. *Opinion of July* 24, 1848, 5 Op. 5.

166. Where the Government entered into a contract with an individual for removing the Miamies, estimated at 650 souls, from Indiana to the country assigned them west of the Mississippi, and to subsist them, &c., for the sum of $55,000, upon condition that should the number be greater or less there should be neither addition nor reduction of the amount, and that he should not use any force to compel them to emigrate; and the said contractor, pursuant thereto, removed and subsisted 384 of the Indians, being all who were found willing to emigrate: *Held* that said contractor has entitled himself to the whole sum stipulated for removing and subsisting the tribe. *Opinion of Jan.* 17, 1849, 5 Op. 64.

167. Beals & Dixon have no legal claim against the United States for an increase of prices under their contract of January 1, 1857. *Opinion of July* 9, 1866, 11 Op. 526.

168. The claim of James T. Sandford for compensation for the use of the steamer Kennebec, under charter to the Government, should be allowed upon the facts as reported by the Second Comptroller. *Opinion of Dec.* 9, 1868, 12 Op. 541.

169. In 1868, A. and V. made a contract with the Osage tribe of Indians, by which they were to receive one-half of what should be secured to the tribe by reason of their services in preventing the ratification of a treaty affecting lands of the tribe. After the ratification had been defeated that contract was relinquished, and in 1873 a new one was made, by which the sum of $230,000 was agreed to be paid A. and V. This contract having been submitted by these parties to the Commissioner of Indian Affairs and the Secretary of the Interior "for payment of the whole amou thereof, or for so much as they might dee just and equitable in the premises," was a proved by the Commissioner and Secretary 1 the sum of $50,000, which was according paid. Subsequently, on application of A. a V. to the Indian Department to reopen t case, the Secretary of the Interior refused make any further allowance. On petition the governor and council of the Osages in 1 half of A. and V., asking the President to rect a further allowance of the claim: *Advis* that the petition cannot with justice or p priety be granted by the President, (1) becau his power to order the payment is (for reaso stated in the opinion) of doubtful legality; (because the same claim was submitted by t parties to the Interior Department and award made thereon, which has been paid; (because at a subsequent time it was reopen and the same decision reached; (4) the matt is now *res adjudicata*. *Opinion of Aug.* 7, 187 15 Op. 350.

VII. For Damages.

170. When the British invaded Castine, t commander of the United States ship Adan then lying in that port, burnt her, to preve her from falling into the hands of the enem and the fire communicated with a neighbori warehouse, in which there was valuable pr erty destroyed: *Held* that the damage was o of those casualties of war resulting from posure, and that the Government was not lial therefor. *Opinion of Jan.* 8, 1819, 1 Op. 2

171. The owners of vessels chartered for t purpose of transporting Indians from Flori but not employed for that purpose, are lega entitled to the stipulated demurrage and t actual damage occasioned by the non-fulfi ment of the contract. *Opinion of July* 27, 18 3 Op. 280.

172. The claim for damages for an alleg breach of the contract entered into with a f mer Secretary of the Navy by A. G. & A. Benson for the transportation to the Paci Ocean of all the naval stores which the Go ernment should have occasion to send the during a certain period, by reason of the wit holding of the transportation of certain freig from them, or the sending it by the pub vessels, cannot be allowed by the Executi

Department. *Opinion of Sept.* 8, 1848, 5 Op. 29.

173. There is no law which authorizes the head of any Department to supervise the acts of his predecessors and to award damages for their assumed misconduct, to be paid out of the public Treasury. *Ibid.*

174. This claim having been once considered at the proper Department and rejected, after a reference to the President, is *res judicata. Ibid.*

175. During the late rebellion T. & Co. contracted with a quartermaster to deliver one thousand mules, at a stated price for each; the quartermaster accepted and paid for twenty-four of the mules, but, deeming a further supply not needed for the service, gave notice to the contractors, who were ready to perform the contract, that he would receive no more mules under the same. The contractors claim from the Government the difference between the expense, in time and money, incurred by them for the performance of the contract and the value of the mules declined to be received thereunder by the quartermaster when the notice was given as aforesaid. *Held* that the claim, being one for unliquidated damages, cannot be entertained by the accounting officers of the Treasury. *Opinion of April* 6, 1872, 14 Op. 24.

176. In the case of David Quinn the Secretary of War is not authorized to pay anything in compromise of damages alleged to have been sustained by him in connection with his contract of August 10, 1867, for removing rock at the entrance of Eagle Harbor, Michigan; the authority of the Secretary being restricted to paying for work actually performed by him. *Opinion of Feb.* 8, 1873, 14 Op. 183.

177. It is not competent to the Third Auditor and Second Comptroller of the Treasury to adjust a claim for alleged loss or damage arising on breach of a contract wherein the Government undertook to furnish the claimant with transportation "for men and animals employed for the work, also for the necessary subsistence, forage, materials, machinery, and tools." *Opinion of Sept.* 9, 1875, 15 Op. 39.

VIII. Services.

178. Governor Cass, having been employed by the Government to perform services which did not belong to his duty as governor of Michigan Territory, has a fair claim to compensation on the principle of a *quantum meruit. Opinion of Dec.* 12, 1828, 2 Op. 189.

179. The claim of Thompson & Harris for professional services rendered by them for the Cherokee Indians cannot be lawfully allowed and paid out of the appropriations made by the acts of September 30, 1850, chap. 91, and February 27, 1851, chap. 12, to carry into effect the treaties of 1835 and 1846. *Opinions of April* 26, 1851, *and June* 23, 1851, 5 Op. 363, 379.

180. The terms of the act of 1850 require payment to be made to the Indians, and those of the act of 1851 require it to be made in conformity with the treaty of 1846. And both of the treaties in effect require the moneys stipulated to be paid to be divided among them equally and paid to them individually. *Ibid.*

181. Upon examination of the papers in the claim of William P. Wood, formerly chief of the secret-service division of the Treasury Department, for services in capturing certain counterfeit plates for printing 7.30 Treasury notes, &c., under an alleged agreement with the Secretary of the Treasury in 1867: *Advised* that the approval of the report of Assistant Secretary French, made by the Secretary of the Treasury September 23, 1878, stand as the final determination of the case. *Opinion of Dec.* 2, 1878, 16 Op. 216.

IX. Army Supplies.

182. The jurisdiction of the Commissary-General, under the third section of the act of July 4, 1864, chap. 240, extends only to claims for subsistence which originated in the loyal States. *Opinion of Nov.* 24, 1865, 11 Op. 405.

183. The act of July 4, 1864, chap. 240, so far as it relates to the jurisdiction of the Court of Claims, is a restraining statute; but in so far as it relates to the adjustment of the claims for quartermasters' and commissary stores therein mentioned it is an enabling law. *Opinion of Aug.* 7, 1868, 12 Op. 439.

184. That act does not comprehend accounts founded upon express contracts for the purchase of supplies for the Army, made by the proper agents of the Government, within the scope of the Army appropriation acts. *Ibid.*

185. A claim arising upon such a contract cannot properly be said to originate in an in-

surrectionary State, although the contract may have been performed in such a State. *Ibid.*

186. The declaratory act of Febuary 21, 1867, chap. 57, so far as it relates to the settlement of claims for supplies furnished to the Army, embraces only the class of claims covered by the act of 1864, and does not extend to accounts based upon contracts made by the duly authorized agents of the Government. *Ibid.*

187. By the act of February 18, 1875, chap. 80, which amends the Revised Statutes by adding after section 300 * * * "section 300 B," the Commissary-General is authorized to examine claims submitted by loyal citizens of the State of Tennessee, and of the counties of Berkeley and Jefferson, West Virginia, for subsistence stores taken or received during the rebellion. It is not material whether the actual presentation of such claims to him occurred before or after the adoption of that act. *Opinion of Aug.* 25, 1875, 15 Op. 36.

188. To satisfy the requirements of the statute which makes "the loyalty of the claimant" an essential element in a claim presented under the act of July 4, 1864, chap. 240, in order to warrant a recommendation for settlement thereof, proof of a pardon is sufficient. *Opinion of Oct.* 26, 1875, 15 Op. 60.

X. Property Lost or Destroyed in the Military Service.

189. The cavalry called into the service of the United States under the act of 6th February, 1812, chap. 21, are entitled to compensation for their horses killed in action, or otherwise lost without their fault or negligence. *Opinion of Dec.* 16, 1814, 5 Op. 701.

190. In the allowance of this right, the provisions of the act of May 12, 1796, chap. 25, ought to be considered as furnishing the rule of proof, as well as that of restriction in value. *Ibid.*

191. No claims for losses sustained by officers, volunteers, rangers, or others engaged in the campaign against the Seminole Indians are to be allowed except those which took place in consequence of the Government of the United States failing to supply sufficient forage, and to such claimants only as can furnish the evidence required by the proviso of act May 4, 1822, chap. 48. *Opinion of May* 22, 1822, 1 Op. 543.

192. In order to entitle parties to compensation under the act of February 19, 1833, chap. 33, for horses lost in service, the animals must have died from some of the causes enumerated in the law. *Opinion of May* 20, 1833, 2 Op. 570.

193. Losses of horses to the owner, where the death cannot be proved, have not been provided for under that act. *Ibid.*

194. Where horses died for want of forage, the fact of the owners being paid for forage will not preclude compensation. *Ibid.*

195. The act of February 19, 1833, chap. 33, to provide for the payment of claims for property lost, &c., during the late war with the Indians on the frontiers of Illinois and Michigan Territory, does not authorize an allowance to any person (except minors provided for in the third section) who was not personally engaged in the service of the United States in the campaigns referred to. *Opinion of July* 21, 1834, 2 Op. 658.

196. Yet it is not indispensable that claimants shall show absolute property in the horse or equipage lost in the service. Where horses, &c., were furnished to the troops by persons not engaged in the service, and who still retained the absolute ownership, the possessors acquired a qualified property, which, as between them and the Government, entitles them to be regarded as the owners, and sufficiently brings them within the equity of the law—especially as they must (in most cases, at least) have been liable to make good the loss to the absolute owner. *Ibid.*

197. Allowances for horses are authorized where it shall appear that they were lost, without any fault or negligence on the part of their owner or owners, in battle; or by dying of wounds received in battle while yet in the public service; or by dying from being unavoidably abandoned or lost while in the public service, in consequence of the failure of the United States to supply sufficient forage; or when lost because the rider was dismounted and separated from his horse and ordered to do military duty on foot at a detached station. *Ibid.*

198. Allowances for equipage are authorized when it shall appear that it was actually lost in battle, or in consequence of the loss of a horse to which it belonged. Whether harness

shall be considered as equipage is a question of fact and military science rather than of law, but the Attorney-General supposes it should be so considered. *Ibid.*

199. The Third Auditor has exclusive jurisdiction over the accounts and claims for horses and other property destroyed in the military service, under the act of January 18, 1837, chap. 5. *Opinion of April* 6, 1842, 4 Op. 16.

200. The statutes in force which provide indemnity for officers' horses lost in certain circumstances apply to officers of the regular Army as well as to volunteers. *Opinion of Jan.* 6, 1857, 8 Op. 293.

201. The Third Auditor, in adjusting, under the act of March 3, 1849, chap. 129, a claim for the value of a horse lost in the service of the United States, has the right to go behind the settlement of the paymaster after the Second Comptroller's approval thereof. *Opinion of May* 26, 1858, 9 Op. 151.

202. The act of Congress does not confer upon the Auditor a general power of revision over all the accounts of the claimant, and over all payments allowed to him for forage, for other horses than the one dead, lost, or abandoned. *Ibid.*

203. "Use" of a horse, in the act of 1849, does not mean the active employment of the animal in a military expedition. *Ibid.*

204. An infantry or mounted soldier residing at one place and discharged at another may receive his daily allowance for every twenty miles between the two places, without incurring any obligation to go to the former. The cavalryman may sell his horse the day after he is paid without incurring any liability to return the sum allowed as commutation for forage on the journey home. *Ibid.*

205. The word "mounted" does not necessarily imply that the soldier is either on his horse or with his horse. It indicates the general character of the corps or service. *Ibid.*

206. If a soldier chooses to accept commutation instead of forage, he cannot recover compensation for the horse which he may starve by his mistaken economy. *Ibid.*

207. Under the act of March 3, 1849, chap. 129, the fact of a payment having been made to a soldier as a mounted man after the loss of his horse is not conclusive evidence that he was remounted during the time for which he was paid. *Opinion of Sept.* 8, 1858, 9 Op. 185.

208. Under the act of March 3, 1849, chap. 129, mounted volunteers are entitled to compensation for horses lost or destroyed by unavoidable accident while in the service of the United States. *Opinion of April* 18, 1859, 9 Op. 334.

209. The receipt of commutation for forage is not conclusive evidence that the soldier had previously elected to take it; but it throws on him the burden of showing that he could not obtain forage in kind. *Ibid.*

210. The commander of an army, on an expedition to suppress insurgents, forcibly reduced to military control a train of wagons, cattle, horses, &c., transporting merchandise with a view to its sale in the territory of the insurgents, for the purpose of preventing the property from falling into the hands of the enemy, and not with any design to avail himself of the property for transportation, supply, or defense. Subsequently the wagons were used for defensive purposes and abandoned, and the cattle and horses were worked in the army trains, and either died while thus employed or were afterwards lost or destroyed: *Held* that the owners were entitled to be paid the value of the wagons, horses, and cattle under the act of March 3, 1849, chap. 129, providing "for the payment of horses and other property lost or destroyed in the military service." *Opinion of April* 25, 1861, 10 Op. 21.

211. The act of 1849 is a remedial statute, and should accordingly be construed so as to advance the remedy. *Ibid.*

212. Where a vessel was lost while in the military service of the Government, and it appeared that the owner had a just legal claim on the insurers for the loss, the Secretary of War was advised not to entertain an application for indemnity from the Government until the liability of the insurance company should be judicially determined. *Opinion of June* 2, 1862, 10 Op. 267.

213. Marshall O. Roberts is entitled to compensation for the loss of the steamer Star of the West under the circumstances of that case. *Opinion of July* 5, 1862, 10 Op. 310.

214. A claim for the value of a vessel seized *jure belli* at New Orleans, upon the capture of that city by the United States naval forces, turned over to the Army, and afterwards captured by the rebels, is not within the jurisdiction conferred upon the Third Auditor by the

act of March 3, 1849, chap. 129. *Opinion of Oct.* 23, 1865, 11 Op. 378.

215. A barge used for transportation of merchandise, and owned by a person not in the military service, is within the species of property enumerated in the fifth section of the act of March 3, 1849, chap. 129, as property to be paid for when lost in the military service of the United States. *Opinion of Feb.* 4, 1868, 12 Op. 362.

216. The act of July 4, 1864, chap. 240, "to restrict the jurisdiction of the Court of Claims," does not repeal the act of March 3, 1849. *Ibid.*

217. The award of the Third Auditor in the case of J. and R. H. Porter, made on the 10th of May, 1861, under the act of March 3, 1849, chap. 129, is no longer of any force. *Opinion of March* 27, 1869, 13 Op. 9.

218. Where the loss of a steamboat has been caused by the carelessness of anybody, a claim for its value does not fall within the provisions of the second section of the act of March 3, 1849, chap. 129, as amended by the fifth section of the act of March 3, 1863, chap. 78. *Opinion of July* 6, 1869, 13 Op. 120.

219. Where a steamboat, previously insured by her owners, was impressed into the military service of the United States, and while in such service was lost, after which the underwriters paid the amount of their policies to the owners, who subsequently filed a claim against the United States for the value of the steamboat under the act of March 3, 1849, chap. 129, as amended by the act of March 3, 1863, chap. 78, and were allowed and paid the value thereof, less the amount received by them from the underwriters: *Held* that (the loss being such as, had there been no insurance on the steamboat, would have rendered the United States liable to pay her full value to the owners) the contract of insurance between the owners and the underwriters did not affect or diminish the liability of the Government; and that, as against the Government, the underwriters are entitled to be subrogated to the rights of the owners for the amount paid on their policies. *Opinion of Jan.* 12, 1870, 13 Op. 182.

220. In a steamboat claim under the second section of the act of March 3, 1849, chap. 129, and the fifth section of the act of March 3, 1863, chap. 78, the burden of proof rests on the claimant, and before he can become entitled to compensation for the loss of his property he must prove everything made essential by the act—the ownership, the military service, the destruction, the unavoidable character of the accident, and the entire absence of fault or negligence on his part. *Opinion of Feb.* 18, 1871, 13 Op. 381.

221. The second section of the act of March 3, 1849, chap. 129, providing for payment for certain property lost or destroyed in the military service, is not repealed by the fourth section of the legislative, executive, and judicial appropriation act of July 12, 1870, chap. 251. The repealing clause of the latter section operates exclusively on sections 1 and 7 of the former act. *Opinion of Aug.* 16, 1871, 13 Op. 507.

222. The facts and circumstances presented in the claims of C. A. Perry & Co. failing to show that the claimant's property was destroyed while in the military service of the United States either by impressment or contract: *Held* that the claim is not within the provisions of the second section of the act of March 3, 1849, chap. 129. *Opinion of Nov.* 19, 1872, 14 Op. 137.

223. The first and second sections of the act of March 3, 1849, chap. 129, provide respectively for a separate and distinct class of claims. The two classes distinguished from each other. *Opinion of Feb.* 5, 1874, 14 Op. 360.

224. Claims of officers and soldiers for horses lost in the military service, where their horses were in service simply as a part of the equipment belonging to and furnished by them, are allowable only under the provisions of the first section. *Ibid.*

225. But where the property was in service by impressment or contract, and not merely by being a part of the equipment furnished by the officer or soldier, such claims are allowable under the provisions of the second section, which contains no restrictions as to *persons*. *Ibid.*

226. Horses which constitute a part of the equipment of officers and soldiers, furnished by themselves, are not in the military service by "contract," much less by "impressment," within the meaning of the term as employed in the latter section. *Ibid.*

227. Lieutenant Mansur went on an expedition up the Red River, leaving his horse and saddle behind with the regiment to which he

belonged. During his absence the horse and saddle were, by order of the colonel of his regiment, taken and used in the military service without his knowledge and consent, and while so in such service were lost. Claim being made by him for the value of the property under the act of March 3, 1849, chap. 129: *Held* that the case falls within the second section, and not the first section, of that act. *Opinion of Feb.* 16, 1874, 14 Op. 367.

228. To bring a claim for the loss of a steamboat within section 3483 of the Revised Statutes it must be shown, first, that the boat was in the military service either by impressment or contract; second, that the loss occurred while the boat was actually employed in such service; third, that it was caused by an unavoidable accident, and not through any fault or negligence on the part of the owner; fourth, that the case is not one wherein the risk was agreed to be incurred by the owner. *Opinion of March* 5, 1875, 14 Op. 536.

229. Where the question in such a claim is whether the boat was or was not in the military service by contract, the distinction between a contract which imports the letting of the boat for hire (*locatio rei*), and one importing merely the carriage of goods for hire (*locatio operis mercium vehendarum*), is material; contracts of the former kind *only* being within the statute. *Ibid.*

230. To make an impressment binding upon the Government it is essential that there be shown to have existed such an emergency as justified the officer in taking the property; but this, together with an actual taking, or what is equivalent thereto, being satisfactorily established by the claimant, nothing more remains to be proven by him under that head. *Ibid.*

231. In June, 1865, a steamboat was chartered by the Government to run on the Chattahoochee and Appalachicola Rivers, the management of the craft being left in charge of the owners. While under charter it was accidentally lost by fire: *Held* that the boat was not in the military service within the meaning of section 2 of the act of March 3, 1849, chap. 129, as amended by section 5 of the act of March 3, 1863, chap. 78, and that the United States incurred no liability for the loss. *Opinion of March* 8, 1877, 15 Op. 205.

232. A vessel was chartered by the Quartermaster's Department at New York, October 17, 1861, for a voyage of fifteen days, at a certain sum for the voyage, and a certain per diem for detention of the vessel beyond that period. The owner covenanted to keep the vessel seaworthy, and to victual, man, coal, and furnish her for the voyage; but the charter was silent with respect to the risks of the voyage. The vessel was to be laden with such cargo as might be desired by the Government officer, and as soon as her cargo was on board she was to proceed direct to Old Point Comfort and be placed under the orders of the quartermaster there as to her future destination, and on arrival at her final destination she was to deliver her cargo and then return to New York. The vessel having arrived with a cargo at Old Point Comfort and reported to the quartermaster at that port, by orders from the Quartermaster's Department joined the transport division of the military and naval expedition there organizing against Port Royal, S. C. The expedition put to sea October 29, 1861, and on November 3, 1861, the vessel was lost in a storm without fault or negligence on the part of her owner. The vessel was, while with the expedition, under the absolute control of the officers of the expedition as respects her course and rate of speed: *Held* (1) that the vessel was, by her charter, in the military service of the United States within the meaning of section 3483 Rev. Stat.; (2) that the owner not having expressly agreed to incur the risks of the voyage, the case does not fall within the exception contained in that section. *Opinion of Jan.* 11, 1879, 16 Op. 242.

XI. Proceeds of Cotton Seized and Sold.

233. The executive department of the Government has no power to appoint a commission and confer upon it jurisdiction to examine the claims for the cotton captured at Savannah by the military authorities in December, 1864, and turned over by them to the Treasury agents appointed under the provisions of the act of March 12, 1863, chap. 120, with a view to the restoration of the proceeds of so much of the cotton as may belong to loyal claimants; but the proceeds of the sale of all such cotton should be paid into the Treasury to await the action of the Court of Claims and of Congress. *Opinion of July* 5, 1865, 11 Op. 273.

234. There is no legal distinction between the case of the cotton claimed by David Bar-

row and the case of the Savannah cotton. *Opinion of Aug.* 14, 1865, 11 Op. 319.

235. The criterion of a case of "captured" property within the meaning of the act of March 12, 1863, chap. 120, is the fact of actual and hostile seizure. *Ibid.*

236. The words "lawful owners," as employed in the fifth section of the act of May 18, 1872, chap. 172, signify such persons as have a legal interest in the proceeds of the cotton or in any portion thereof; that is to say, first, the holders of the absolute legal title to the cotton at the time of its seizure; and, second, those who had possession in a representative capacity, with a lien for services or for advances and expenses. *Opinion of Jan.* 21, 1875, 14 Op. 515.

237. The claimant of a purely equitable interest (*i. e.*, one who can only claim through a trustee, the legal title being in the latter) cannot, *in general*, be deemed the lawful owner within the meaning of the act. Exceptions hereto indicated. *Ibid.*

238. The executors or administrators of deceased lawful owners are their legal representatives; but these may also, under some circumstances, be the heirs or next of kin of such owners. *Ibid.*

239. It is not the duty of the Secretary, under said act, to decide between conflicting claims on equitable grounds alone; and in a contest between a trustee and a beneficiary the former is entitled to possession where the trust remains unexecuted and possession is necessary to enable him to execute it. *Ibid.*

240. In May, 1863, one H., a resident of Arkansas, being the owner of certain bales of cotton, sold and delivered the same to the Bank of Chattanooga, Tenn., receiving therefor the price agreed upon. Afterward these bales (the name of the cashier of the bank being marked thereon), while in his possession, were unlawfully seized by the agents of the United States, sold, and the proceeds turned into the Treasury. By a law of Tennessee, in force at the time of the sale, banks of that State were prohibited from using or employing any of their moneys in trade or commerce: *Held* that, notwithstanding said law, the purchase was valid as between H. and the bank, and consequently that, as between them, the latter was lawful owner of the cotton when seized. *Ibid.*

241. However, assuming that the purchase in that case, although in the name of the bank, was in fact made by the bank not with its own funds, but with the funds of a third party, or with funds belonging to the estate of a decedent, the ownership of the cotton was in the estate or party with whose money it was bought. *Ibid.*

242. The seizure of cotton by an authorized agent of the Treasury Department does not raise a conclusive presumption that the proceeds thereof went into the Treasury. *Ibid.*

243. In the determination of questions, whether of law or fact, arising upon claims filed under the fifth section of the act of May 18, 1872, chap. 172, the judgment of the Secretary of the Treasury is not subject to direction or control; he acts independently, even of the Executive. *Opinion of Jan.* 11, 1878, 15 Op. 423.

XII. From States in Insurrection.

244. The act of February 21, 1867, chap. 57, "to declare the sense" of the act of July 4, 1864, chap. 240, was intended to take away all authority to settle claims for the destruction or appropriation of personal property by the military authorities, if they originated during the rebellion and in an insurrectionary State. *Opinion of Feb.* 4, 1868, 12 Op. 362.

245. The Third Auditor and Second Comptroller have no power, since the passage of the act of February 21, 1867, to settle a claim for the value of a barge owned by residents of New Orleans, which was lost in 1864, in the Mississippi River, while under impressment by the military authorities. *Ibid.*

246. A claim for the use and occupation of real estate in Tennessee seized and used by the Army in January, 1863, cannot be settled by the executive department of the Government under the act of July 4, 1864, chap. 240, and the act of February 21, 1867, chap. 57. *Opinion of Sept.* 7, 1868, 12 Op. 486.

247. The act of February 21, 1867, chap. 57, prohibits the payment of compensation for the services of a steamboat under military impressment in Louisiana in 1862 and 1863, though owned in Ohio and licensed to trade at New Orleans after the port was opened to commerce. *Opinion of Sept.* 30, 1868, 12 Op. 497.

248. The joint resolution of March 2, 1867, prohibiting the payment of claims in favor of parties who promoted, encouraged, or sustained the rebellion, &c., which accrued prior to the

13th of April, 1861, does not apply to claims in favor of corporations aggregate. Hence the claim of a railroad corporation in one of the Southern States for transportation of the mails from April 1 to May 31, 1861, is not in any part within the prohibition. *Opinion of March* 29, 1871, 13 Op. 398.

249. But unless there remains an unexpended balance not covered into the Treasury, sufficient in amount for the purpose, of moneys appropriated for the postal service for the fiscal year 1860–'61, it would seem that payment of such claim cannot now be made without a special appropriation therefor. *Ibid.*

250. The act of March 3, 1871, chap. 116, providing for a board of commissioners to receive, examine, and report to Congress upon claims of loyal citizens of the insurrectionary States for supplies taken or furnished for the use of the Army during the rebellion, repeals the act of July 4, 1864, chap. 240, and the joint resolutions of June 18 and July 28, 1866, so far as Tennessee and the counties of Berkeley and Jefferson, West Virginia, are concerned, and places that State and those counties upon the same footing in respect to claims as other insurrectionary States. *Opinion of April* 6, 1871, 13 Op. 401.

251. None of these acts, however, are applicable to, or forbid the settlement by the Executive Departments of, accounts founded upon express contract for the purchase of such supplies made by officers or agents of the Government acting under competent authority. *Ibid.*

252. Gideon J. Pillow, of Tennessee, having been pardoned by the President for his participation in the rebellion, filed in the War Department a claim against the Government for mules alleged to have been taken from his plantation in Arkansas, in the year 1862, by the military forces of the United States: *Advised* that the allowance of the claim by the War Department is prohibited by the act of February 21, 1867, chap. 57. *Opinion of Aug.* 14, 1872, 14 Op. 103.

253. The act of February 21, 1867, chap. 57, does not forbid the settlement of a claim for the use and occupation of real estate by the military authorities or troops of the United States after the termination of the war, though such use and occupation may have commenced during the war and continued down to the period covered by the claim. *Opinion of July* 22, 1876, 15 Op. 572.

254. An alien woman married F., a naturalized citizen and resident of the United States, who died in 1860. In 1862 she married D'A., an alien, who was domiciled in the United States, but who subsequently died without becoming a citizen thereof. She claims, under section 2 of the act of March 3, 1871, chap. 116, compensation for her separate property taken during the lifetime of her second husband: *Held* that she is a citizen of the United States within the meaning of section 2 of said act. *Opinion of Jan.* 23, 1877, 15 Op. 600.

255. In February, 1861, and previously, G. had a contract (with the usual provision for one month's pay where service is discontinued) for carrying the mail on route 8076, from San Antonio to Los Angeles, via El Paso, which was, by an order of the Postmaster-General issued on the 16th of March, 1861, in pursuance of the act of February 27, 1861, chap. 57, extended until June, 1865. Subsequently, on the 30th of May, 1861, the Postmaster-General issued an order (under the act of February 28, 1861, chap. 61) discontinuing the service between San Antonio and El Paso until it could be safely restored. In 1863 the Post-Office Department declined to make an allowance for discontinuance of service on this part of the route, for the reason that it "stands in the same category with the mass of Southern mail contracts, and must await whatever action is taken on them. *Held* (1) that this was not a final adjudication upon the claim for one month's pay for said discontinuance, but amounted only to a postponement of its consideration, and that the Department is not precluded thereby from now passing upon the claim; (2) that though the action of the Postmaster-General in discontinuing the service was taken under the act of February 28, 1861, the contractor is nevertheless entitled to the one month's pay by virtue of his contract, agreeably to the law as laid down in the case of *Reeside* v. *United States* (8 Wall., 38). *Opinion of Sept.* 5, 1877, 15 Op. 365.

256. In August, 1864, a commissary of subsistence received from P., at Barrancas, Fla., sixteen head of beef-cattle for the use of the Army, and gave him a receipt therefor, which concluded as follows: "The owner of said

stores will be entitled to be paid for the same after the suppression of the rebellion, upon proof that he has from this date conducted himself as a loyal citizen of the United States, and has not given aid or comfort to the rebels." *Held* that the accounting officers of the Treasury have no authority to audit and settle a claim for said cattle Claims of this character are cognizable only by the Southern Claims Commission created under the act of March 3, 1871, chap. 116. *Opinion of Aug.* 1, 1878, 16 Op. 110.

XIII. Infringement of Patent.

257. The Department under whose direction a machine for which a patent was issued was made and used may legally allow the patentee the amount claimed by him as damages for such use, if it is satisfied that the claimant's exclusive right as patentee is good, and that the sum demanded be fair and reasonable, provided there be any fund under the control of the Department which is appropriated to that purpose. *Opinion of March* 18, 1858, 9 Op. 135.

258. Where claims presented to the Secretary of War for the use of certain patents were not based upon contracts, and involved questions proper for judicial rather than executive determination: *Advised* that he ought not to act upon them officially until the questions referred to are settled. *Opinion of Sept.* 22, 1873, 14 Op. 301.

XIV. Reimbursement for Expenditure.

259. The claim of Lieutenant Hunter for reimbursement on account of expenditures incurred in making experiments for propelling war steamers by horizontal wheels is within the act of September 11, 1841, chap. 21, and the act of March 3, 1841, chap. 34, making appropriations for the naval service for the year 1841. *Opinion of Oct.* 1, 1841, 3 Op. 659.

260. When an officer of the United States is sued for the performance of his duty the Government is bound to protect him by paying the costs of his defense. If he defends himself, and proves upon his trial that he was executing the law or the orders of his superior, his expenses ought to be reimbursed to him. *Opinion of June* 14, 1857, 9 Op. 51.

261. The claim of J. D. Hoover, late marshal of the District of Columbia, for reimbursement for certain expenses in suits brought against him, should be allowed. *Opinion of March* 1, 1861, 10 Op. 7.

262. C. and F. borrowed from W. a flat-boat, to use in repairing a dredge-boat belonging to the United States, employed in improving the Ohio River. By direction of a subordinate officer of engineers the flat-boat was used in removing a wreck, the removal of which had been ordered by the engineer officer in charge of the Ohio River improvement, who, however, did not direct the flat-boat to be so used. W. subsequently brought suit against C. and F. for this unauthorized use of his property, and recovered judgment against C., the amount of which F. (being on the bail-bond of C.) was ultimately compelled to pay. F. claims reimbursement of the amount from the Government. *Held* that the payment by F. was in satisfaction of damages recovered for a private boat, in respect to which the United States was under no liability whatever; and that, even if it were a valid claim, it is not within the scope of the appropriation for the Ohio River improvement. *Opinion of April* 15, 1878, 15 Op. 487.

263. The clause in the sundry civil act of June 20, 1878, chap. 359, namely, "To pay Charles P. Birkett the sum of $32,505.71, to reimburse the said Birkett, late United States Indian agent, for money expended by him for the benefit of the Indians at Ponca agency, Dakota," does not amount to a determination by Congress that such sum is actually due to Birkett. It contemplates that there will be an examination by the proper officers of the amount so expended. Accordingly, it is the duty of the auditing officers to ascertain whether the amounts expended by Mr. Birkett for the benefit of said Indians equal the sum appropriated, and, if not, to allow him out of the appropriation only that which is found to be due him upon settlement of his accounts for such expenditures. *Opinion of July* 12, 1878, 16 Op. 67.

XV. For Indian Depredations.

264. The seventeenth section of the act of June 30, 1834, chap. 161, relative to Indian depredations, applies only to tortious and violent if not to a felonious taking. *Opinion of July* 13, 1842, 4 Op. 72.

265. The United States undertook to guar-

antee against violence on both sides; but differences in matters of contract do not come within the sixteenth and seventeenth sections of that act. Provision is made for such controversies in the twenty-second section, and the presumption of law is against the whites. *Ibid.*

266. The claim of Colonel Thomas does not come within any fair interpretation of the sixth article of his contract with the Government. The district court having passed upon the claim, it is doubtful whether the Executive can go beyond what was thus decided. *Opinion of Aug.* 13, 1842, 4 Op. 81.

267. Indians at peace with the United States are in no received sense of the word "an enemy," and cannot be judicially considered as embraced within it. *Ibid.*

268. The case of Colonel Thomas being reconsidered, it is held that a judgment of the circuit court of New York does not preclude the accounting officers from going beyond the items actually proven by way of offset in the case. *Opinion of Aug.* 18, 1842, 4 Op. 87.

269. The Secretary of War is at liberty to take up the case on the footing of equity and justice—the basis of chancery jurisdiction. *Ibid.*

270. If the evidence brings the case within the act of March 30, 1802, chap. 13, there is an equitable obligation on the part of the United States to indemnify against loss; for by that act the United States agree to guarantee eventually all persons against depredations committed by Indians residing in the Indian country. But in that case it must be proved, or at least rendered probable, that the robbers in question were Indians residing in the Indian country. *Ibid.*

271. If this cannot be made out, then it must be shown that the United States were guilty of some laches, delay, &c., exposing the claimant to a loss which he would not otherwise have encountered. *Ibid.*

XVI. Of Colored Soldiers and Sailors.

272. Provisions of the act of December 15, 1877, chap. 3, relative to the collection and payment of bounty, prize-money, and other claims of colored soldiers and sailors, considered and construed. *Opinion of Dec.* 30, 1878, 16 Op. 237.

273. All papers connected with the payment of such claims, after the Bureau referred to in the said provisions is closed, should be turned over to the Second Auditor of the Treasury Department, that officer "having charge of the payment of bounties due to white soldiers." *Ibid.*

274. In regard to the money in the hands of the Secretary of War for the payment of such claims: *Advised* that it be paid to the Treasurer of the United States, with whom it will remain appropriated for the purposes to which it is now devoted until Congress shall otherwise dispose of it. *Ibid.*

275. As by the provisions of said act the Bureau referred to therein is to be closed, all administrative machinery peculiar to that institution will thereupon cease to exist. *Ibid.*

276. Those provisions do not *require* that adjusted cases for the payment of which money is now in the hands of the Secretary of War shall, after the 1st day of January, 1879, undergo resettlement by the accounting officers of the Treasury; yet if any substantial reason exists for resettling such cases there is nothing in the statute to prevent it. *Ibid.*

XVII. Of States.

277. The Secretary of the Treasury cannot legally pay to the State of Illinois the 3 per cent. of the proceeds arising from the sales of public lands within the same, reserved under the acts of April 18, 1818, chap. 67, and December 12, 1820, chap. 2, unless the account required by the last-mentioned act indicated that the moneys heretofore paid have been applied to the encouragement of learning within the State of Illinois. *Opinion of Sept.* 11, 1829, 2 Op. 269.

278. The claim of the State of Alabama, under the act of March 2, 1819, chap. 47, to be allowed 5 per cent. of the net proceeds of the lands of the United States lying within her limits, received on sales made before as well as after the 1st September, 1819, is admissible on the construction given to similar acts relating to Ohio, Indiana, and Illinois. *Opinion of Nov.* 21, 1849, 5 Op. 187.

279. The State is, therefore, entitled to have all the moneys received from sales after the 1st September, 1819, brought into her account, whether such sales were made before or after that date. *Ibid.*

280. The State of Florida is not entitled, under the act of February 27, 1851, chap. 12,

to be reimbursed out of the national Treasury for the expense of adjusting her accounts for advances, &c., for the militia called into service in 1849. *Opinion of May* 27, 1852, 5 Op. 552.

281. The State of Nebraska is not entitled, under section 12 of the act of April 19, 1864, chap. 59 (which provides that 5 per cent. of the proceeds of the sales of all public lands lying within said States which have been or shall be sold by the United States prior or subsequent to the admission of said State into the Union, &c., shall be paid to said State for the support of common schools), to 5 per cent. upon the value of the lands within that State which have been reserved by the United States for the occupancy of Indian tribes. *Opinion of July* 1, 1874, 14 Op. 666.

282. The thirteenth section of the same act, declaring that "the laws of the United States not locally inapplicable shall have the same force and effect in said State as elsewhere in the United States," does not extend the provisions of the second section of the act of March 3, 1857, chap. 104, to that State; nor, as it would seem, do the provisions of the latter section extend to that State *proprio vigore*. But even assuming the contrary of this, and that the State of Nebraska (in one or other of the modes indicated) is entitled to participate in the benefits of said act of 1857, it nevertheless has no right to an account of lands within its boundary which are included in reservations to Indian tribes. *Ibid.*

283. Distinction between the meaning and applicability of the term "*permanent* reservations" as used in the act of 1857, and the meaning and applicability of the term "reservations" as used in the act of March 2, 1855, chap. 139, pointed out. *Ibid.*

284. The act of March 3, 1877, chap. 106, made an appropriation in these terms: "For payment of amounts certified to be due by the accounting officers of the Treasury Department for transportation of the Army, being for the service of the fiscal year 1871 and prior years," &c. Among the "amounts certified" was an amount found due on settlement of a claim of the State of Kentucky "for the use and occupation by the Army of the United States of the slackwater navigation of the Green and Big Barren Rivers from November 1, 1861, to June 30, 1865:" *Held* (1) that the claim of the State is within said appropriation; (2) that it is not transmissible to the Court of Claims under section 1063 Rev. Stat.; (3) that the Secretary of War, to whom the amount was certified, is bound under section 191 Rev. Stat. to issue his requisition for payment thereof, without regard to his own view of the merits, unless there be "any facts" which in his judgment affect the correctness of the balance; in this case he is authorized, before signing the requisition, to submit the facts to the Comptroller; (4) upon such submission the decision of the Comptroller is "final and conclusive." *Opinion of May* 5, 1877, 15 Op. 626.

285. The limitation prescribed by section 3489 Rev. Stat. for auditing and paying certain claims against the United States does not apply to war claims in behalf of States for which provision was made by the act of July 27, 1861, chap. 21. *Opinion of March* 14, 1879, 16 Op. 284.

286. The words in that section "for collecting, drilling, or organizing volunteers" must be understood, in view of the construction which they had received in previous legislation, as meant to be descriptive of and as applying to that class of war claims only which had theretofore been provided for by the acts of August 5, 1861, chap. 51; July 5, 1862, chap. 133; Feb. 9, 1863, chap. 25; and June 15, 1864, chap. 124; the provisions of these acts, to which reference is made, being construed to cover claims of individuals, and not those of States, for the subjects therein designated. *Ibid.*

287. The act of July 12, 1870, chap. 251, section 4, which repealed the appropriation (indefinite in amount) made by the aforesaid act of July 27, 1861, contemplated that the duty of auditing the claims of States presented under the last-mentioned act should continue to be performed by the accounting officers, and that in future Congress would provide for their payment by appropriations based upon estimates submitted. *Ibid.*

288. It is the duty of the administrative officers of the War Department and the accounting officers of the Treasury Department to proceed with the examination and auditing of these claims, that proper estimates may be submitted to Congress therefor. *Ibid.*

XVIII. Oaths in Support of.

289. *Semble* that whenever the law makes it

the duty of an officer to examine, adjust, and settle claims against the Government, he is impliedly given authority to require such claims to be supported by the oaths of witnesses, where the facts necessary to establish them rest on testimony. *Opinion of July* 23, 1874, 14 Op. 420.

290. The act of February 14, 1871, chap. 51, assumes the existence of authority in heads of Departments and Bureaus to require oaths in cases of claims against the Government, and provides them with a very efficient means for enforcing it. *Ibid.*

XIX. Transmission of to Court of Claims.

291. Where a claim against the United States for the value of property lost in the military service, filed under the provisions of the act of March 3, 1849, chap. 129, had been adjusted by the accounting officers of the Treasury, and the amount found due the claimant certified to the Secretary of War for the issue of a requisition for payment: *Held* that it was competent to the Secretary of War, if it should appear that this claim belonged to the class described in the seventh section of the act of June 25, 1868, chap. 71, to withhold his requisition and cause the claim to be transmitted to the Court of Claims for adjudication, notwithstanding the amount found due thereon had been certified to him as aforesaid. *Opinion of Oct.* 29, 1869, 13 Op. 164.

292. Provisions of the acts of March 30, 1868, chap. 36, and June 25, 1868, chap. 71, compared. *Ibid.*

293. It should distinctly appear on the records or in the proceedings of a Department, when a claim is thus caused to be transmitted to the Court of Claims by the head of that Department, that disputed facts or controverted questions of law are involved in it, and that either the amount in controversy exceeds $3,000, or (without regard to the amount involved in the particular case) that the decision will affect a class of cases, or furnish a precedent for the future action of the Department in the adjustment of a class of cases, or that an authority, right, privilege, or exemption is claimed or denied under the Constitution; and, furthermore, what the facts disputed or questions of law controverted are. *Ibid.*

294. The head of a Department should also transmit to the court such a certificate as will show that the claim is one "of the character, amount, or class limited" in the said seventh section, that it may appear upon the face of the papers transmitted that the court has jurisdiction of the case. *Ibid.*

XX. Assignment of.

295. Sundry parties having conflicting claims against the Government under a statute making provision to defray the expenses of removing the Choctaw Indians from the State of Mississippi, an arrangement between them was made to refer the matter to the arbitration of J. M. C. and P. R. F., with power of attorney to receive the money on their behalf and receipt for the same to the United States: *Held* that this is not a case of the transfer or assignment of a claim, or of agency thereof, forbidden by acts of July 29, 1846, chap. 66, and February 26, 1853, chap. 81. *Opinion of June* 29, 1853, 6 Op. 60.

296. A debt settled by judgment in the Court of Claims, and due from the United States, does not come within the purview and operation of the first section of the act of February 26, 1853, chap. 81, relative to the assignment of claims against the United States. *Opinion of July* 25, 1867, 12 Op. 216.

XXI. Settlement of.

297. The acts of former Secretaries of War are sufficient, until reversed or countermanded, to authorize and require the accounting officers to settle and audit the claim of General Parker for an allowance to the amount of $2,416, in lieu of quarters and fuel. *Opinion of May* 17, 1834, 2 Op. 652.

298. Where by the act of August 23, 1842, chap. 200, the Third Auditor of the Treasury was required, under the direction of the Attorney-General, to ascertain the actual damages which a claimant (Charles F. Sibbald) had sustained, and would be likely to recover, upon principles of law applicable to similar cases, by reason of the interference of any agent or agents of the United States, acting under their authority, with the use and enjoyment of his lands in East Florida, and under such instructions examined, and, in 1844, reported the same at an amount which was accepted; and the matter was, in 1847, reopened, pursuant to a resolution of Congress of August 10, 1846, by

direction of the Secretary of the Treasury, who, after causing some of the items reported by the Comptroller to be reduced and others to be increased, made a final award of an additional amount, which was also subsequently received by the claimant, who, being dissatisfied therewith, desires the matter to be again reopened: *Held* that the decisions, awards, and payment were a final disposition of the claim, and to be esteemed in law a full execution of the act and resolution. *Opinion of June* 27, 1849, 5 Op. 122.

299. The receiving the sum allowed by the decisions and awards estops the claimant from questioning that such allowance and payment constituted a full and final satisfaction of his entire claim. *Ibid.*

300. The award for an amount in addition to the sum formerly allowed upon the claim of Charles F. Sibbald must be regarded as a full and final execution of the act of August 23, 1842, and the joint resolution of August 10, 1846; and, if it were not, the claimant is concluded by his receipt of the award. *Opinion of Nov.* 14, 1849, 5 Op. 176.

301. Good faith demanded that the money should not be taken except (as it was awarded) as a perfect acquittance and discharge of the claim. *Ibid.*

302. The claim having been thus disposed of, it is not competent for the present Secretary to re-examine it to correct errors, nor to receive other evidence in relation to it. The whole matter is *res judicata* and terminated, and can never be reviewed except under some future act or resolution of Congress. *Ibid.*

303. The act of July 9, 1798, chap. 69, bars the payment to representatives of moneys which have remained in the Treasury to the credit of their deceased ancestor unclaimed since 1781. *Opinion of Sept.* 13, 1850, 5 Op. 251.

304. Moreover, the legal presumption arising from the lapse of so great a period of time renders it improper for the Secretary of the Treasury to pay claims of this character without special authority from Congress. *Ibid.*

305. Where a claim against the Pottawatomies had been adjudicated and allowed by a former Secretary of the Interior, and certificates therefor issued by the Commissioner of Indian Affairs to the original claimants, payable from the annuities of that tribe in three annual installments, which were subsequently transferred to Suydam, Sage & Co., and by them to the Merchants' Bank in New York, whose attorney claims payment; but before the same was made, a rehearing was demanded on behalf of the Indians, on the allegation that they were not originally liable to the Ewings for the amount adjudicated to them by the said Secretary; and a question having contemporaneously arisen between the Ewings and the said bank concerning the terms and purposes of their transfer of the said certificates: *Held* that the present Secretary of the Interior ought to regard the decision of his predecessor as to the amount due from the Indians as conclusive; and that payments of the certificates should be withheld until the conflicting claims of the Ewings and Merchants' Bank shall also be settled by the judiciary. *Opinion of Jan.* 8, 1851, 5 Op. 285.

306. It is doubtful whether Indian annuities granted by the Government ought to be regarded as legally assignable unless made so by law. *Ibid.*

307. The act of May 9, 1860, chap. 46, authorizing the Third Auditor to cause the account of George Stealey to be settled on principles of equity and justice gives exclusive jurisdiction over the subject-matter to that officer without any appeal to the Secretary of the Treasury. *Opinion of June* 11, 1860, 9 Op. 430.

308. The requirement that the settlement should be made upon satisfactory "vouchers" does not preclude the introduction of any kind of evidence showing that the party is entitled to the credit he demands. *Ibid.*

309. "Justice" in a statute means legal justice, and "equity" means that modification of rigid legal rules which a chancellor would apply to the matter. *Ibid.*

XXII. Reconsideration and Readjustment of.

310. As a general rule, a decision upon a claim made by the head of a Department can not be disturbed by his successor; but when a claim has been referred by Congress to the head of a Department, and the Department gives such a construction to the statute as defeats the claim in whole or in part, and Congress afterwards, by reports of the appropriation committees or otherwise, indicates its opinion to be against the decision of the Department

the case may be opened, though a change in the mean time has taken place in the head of the Department. *Opinion of Aug.* 25, 1859, 9 Op. 387.

311. Such indications of opinion from the legislature are not binding on the Department, but are to be regarded merely as ground for the reconsideration of the case. *Ibid.*

312. Where a contract was declared to be forfeited by a Secretary of War, and the action of that officer was subsequently declared to have been illegal by the Court of Claims, a succeeding Secretary was held to have the right to open the case for another hearing, to be decided in the way which on such hearing should seem to him to be right and proper. *Opinion of April* 9, 1860, 9 Op. 422.

313. It is within the power of the head of an Executive Department to allow a claim which has been rejected by one of his predecessors, without new evidence. But the decisions of the head of a Department ought only to be reversed on clear evidence of mistake or wrong. *Opinion of June* 12, 1861, 10 Op. 56.

314. Where Congress (by joint resolution of May 2, 1866) referred the claim of certain parties for an increase of prices, under a contract with the Government, to the Attorney-General for his opinion as to the construction of the contract, and the Attorney-General gave his opinion against the construction contended for by the claimants, it was *held* that this was a decision of the case, and not merely of the question, and that his successor in office had no right to reconsider the matter. *Opinion of June* 25, 1867, 12 Op. 169.

315. The cases defined in which the head of a Department is authorized to reopen the final decision of a predecessor. *Opinion of Jan.* 27, 1868, 12 Op. 356.

316. Where the Postmaster-General was authorized and required by act of Congress (that of March 3, 1857, chap. 176) to adjust a particular claim, nothing but a new authority, emanating from Congress, will enable one of his successors to open his adjustment upon the ground that he adopted an erroneous basis of settlement. *Ibid.*

317. The fact that, since the settlement, the committees of the two Houses recommended by reports a different basis of settlement will not authorize a reopening of the case. *Ibid.*

318. *Semble* that the President would have no power, in such a case, to order the reopening of the claim. *Ibid.*

319. The Secretary of War (in execution of the act of March 3, 1877, chap. 119, which authorized him "to open and readjust the settlement made by the United States Government with the Western and Atlantic Railroad of Georgia") made an award, upon which a settlement was effected with the State of Georgia. Subsequently it was claimed that an important item of credit, which should have been allowed the State in the settlement, had been ignored, and application was made in behalf of the State for a revision of the award and settlement. The Secretary declined to reopen the award and settlement for the purpose of revising the same in connection with such claim; but he decided to revise the award for the purpose of making an additional allowance of a certain sum found to be due after correcting an accountant's error against the United States, and also a mistake against the State in the computation of interest. A renewed application for revision of the award and settlement was afterwards made by the governor of Georgia, but, without taking any action thereon, the Secretary resigned and went out of office. *Held* that the succeeding Secretary of War has not power to reopen the award and settlement made by his predecessor in office with a view to the rectification thereof in any respect other than that which had already been directed by his predecessor, the act having been fully executed by the latter. *Opinion of Jan.* 29, 1880, 16 Op. 452.

XXIII. Payment.

320. Payment under the act of 24th May, 1824, chap. 144, "for relief of the assignees and legal representatives of John H. Piatt," may be made to the assignees to the amount of their assignment; and as the amount for which the claim was assigned was not fixed in the assignment, it having been given for advances "made and to be made," the accounting officers must examine into and ascertain the amount actually due the assignees thereon. *Opinion of Aug.* 13, 1824, 1 Op. 692.

321. Notes of the assignor exhibited by the assignees are *prima facie* evidence of the debt; yet the administrators have the right to controvert it. *Ibid.*

322. A payment to a person acting under a

power of attorney from one of several executors is valid, coexecutors being regarded in law as an individual person, and the act of any one of them, in respect to the administration of the effects, as the act of all. *Opinion of Dec.* 8, 1827, 2 Op. 66.

323. Lapse of time, whilst it furnishes strong presumptive evidence against the justice of claims, is no bar to payment. The delay may be accounted for. *Opinion of Sept.* 10, 1831, 2 Op. 463.

324. Payment of the claims of the citizens of Georgia, under the Creek treaty of 1821, and the law concerning them, viz, act of June 30, 1834, chap. 145, may be made by the President to the State of Georgia for the use of the claimants. *Opinion of Dec.* 20, 1834, 2 Op. 691.

325. Where there is a conflict of claims between an executor and his assignees for an award of moneys by the Third Auditor to the decedent, the Treasury officers should pay the same to the executor, who is the legal representative. *Opinion of Dec.* 7, 1835, 3 Op. 29.

326. Where assignments in due form are presented, and no objection is made to the right of the assignee, it may be paid to him. *Ibid.*

327. The resolution of the legislature of the State of Missouri authorizing the governor of that State to receive her distributive share of the funds arising under the provisions of the act of Congress of September 4, 1841, chap. 16, not having been signed by the president of the senate, is not a sufficient authority to sanction the payment. *Opinion of March* 16, 1848, 4 Op. 716.

328. Where a claimant executed a power of attorney to another, authorizing him to prosecute a claim before Congress and to appoint a third person to assist him, and therein assigned to each of them one-fourth of what might be recovered, authorizing them to receive the same; and the claim being subsequently allowed by Congress (by act of March 3, 1849, chap. 164), and demand of payment of one-half thereof, pursuant to said assignment, being made at the Treasury by the two attorneys, it was objected to by the administrators of the claimant, and refused on account of non-compliance with the act of July 29, 1846, chap. 66. *Held* that the latter act clearly prohibits payment to the attorneys, except they produce a warrant of attorney executed *subsequent* to the passage of the act allowing the claim, reciting the amount, properly executed, attested, and acknowledged. *Opinion of April* 13, 1849, 5 Op. 85.

329. As the act of July 29, 1846, was passed prior to the execution of the power of attorney and assignment produced, this construction impairs no previous contract obligations, nor infringes any vested right. *Ibid.*

330. Where an act of Congress was passed, approved, and enrolled, requiring payment of money out of the Treasury to a citizen, such payment cannot be refused on the ground that the law as it passed was coupled with a condition which by accident or design was left out of the enrolled bill. *Opinion of March* 24, 1857, 9 Op. 1.

331. Where the Secretary of the Treasury suspended the execution of a law for that reason, and the party entitled to the money made an abortive attempt to comply with the alleged condition, he was not thereby prevented from afterward demanding his rights according to the law as it stood enrolled. *Ibid.*

332. Where the expressed object of suspending the law was to give Congress an opportunity to correct the supposed error or fraud, and three sessions of Congress passed without such correction after the facts were communicated to both Houses, the law ought to be executed without further delay. *Ibid.*

333. Where an act of Congress required the Second Auditor to adjust a claim, and directed its payment out of the Treasury, and subsequent acts authorized further examination and readjustment of the claim, but contained no authority for the payment of the further amount found due on such readjustment: *Held* that the direction for payment in the first act applied only to the amount ascertained to be due on the first adjustment, and that the officers of the Treasury had no power to pay the additional amount so found due without specific legislative authority for that purpose. *Opinion of April* 29, 1862, 10 Op. 238.

334. The joint resolution of February 21, 1861, repealing the joint resolution of June 15, 1860, for the relief of William H. De Groot, is valid, and his claim cannot be paid in the face of that resolution. *Opinion of June* 6, 1862, 10 Op. 270.

335. In May, 1861, Simeon Hart, then a resident of New Mexico, delivered commissary stores to the Government at certain military

posts in that Territory, for which he received a voucher from the proper officer, but payment thereof was withheld in consequence of an order issued from the War Department during the same month. Hart subsequently took an active part in the rebellion, but was pardoned by the President in November, 1865. He afterward assigned said voucher to two creditors, loyal persons, by whom payment of the same is now demanded. On a question whether payment is prohibited by the joint resolution of March 2, 1867 (No. 46): *Held* that the case presented is not within the prohibition of that resolution, the claim having accrued after April 13, 1861. *Opinion of Dec.* 5, 1872, 14 Op. 145.

336. The proviso in that resolution was intended only to make an exception in favor of claims existing prior to April 13, 1861, which had been assigned or agreed to be assigned to loyal citizens of loyal States prior to April 1, 1861, in payment of debts incurred prior to March 1, 1861. It does not relate to claims additional to those mentioned in the preceding words of the resolution. *Ibid.*

337. Where the payment of a claim against the Government would otherwise come within the prohibition of the joint resolution of March 2, 1867 (No. 46), the fact that the political disabilities of the claimant imposed by the third section of the fourteenth amendment of the Constitution have since been removed by Congress does not free the claim from the operation of that resolution; the prohibition of payment still continues. *Opinion of Nov.* 15, 1873, 14 Op. 329.

338. An approved account or voucher for transportation performed for the Navy Department by F. & C., contractors, was issued by the chief of the Bureau of Steam-Engineering in favor of and delivered to H. & Son, who were brokers for F. & C. The latter claim that the amount appropriated by the act of June 14, 1878, chap. 191, to pay for the transportation, should be paid to them, and not to H. & Son. *Held* that the account or voucher issued as aforesaid is not a negotiable paper; that a transfer or assignment thereof would be void under section 3477 Rev. Stat.; that the appropriation was made for the purpose of paying F. & C., and not any alleged claim of H. & Son; and that the Navy Department may treat such approved account or voucher as a nullity, and issue an approved account in favor of F. & C. and transmit it to them directly. *Opinion of Oct.* 23, 1878, 16 Op. 191.

339. A claim was presented to the Southern Claims Commissioners, under the act of March 3, 1871, chap. 116, the claimant describing himself in his application as "Alexander Anderson, of Augusta County, Virginia." The commissioners made favorable report thereon, finding the amount due claimant to be $175. Their report was adopted by Congress, and by act of March 3, 1873, chap. 339, the Secretary of the Treasury was authorized to pay $175, "out of any moneys in the Treasury not otherwise appropriated," to "Alexander Anderson, of Virginia." In the mean time a claim had also been presented to the Commissioners in the name of Alexander Anderson, of Amelia County, Virginia, which was not allowed. The latter claimant, in March, 1873, gave F. a power of attorney to receive for him the $175 allowed by said act to "Alexander Anderson, of Virginia," describing himself as "Alexander Anderson, of Amelia Court-House, of the county of Amelia, in the State of Virginia." The money was paid to F. on filing said power, who had acted in good faith, and was not informed of the mistake until after he turned over the money to his principal. *Held* (1) that F. is under no legal liability for the money; (2) that his principal is liable, either at the suit of the rightful claimant or of the United States; (3) that the officer of the Treasury through whose negligence the mistake was made is legally chargeable with the amount, to be passed to his credit on the recovery of the money; (4) the rightful claimant does not, in consequence of the mistake, lose his right to be paid out of any money remaining in the Treasury not otherwise appropriated; (5) a second appropriation warrant may legally issue to again place the amount due the rightful claimant to the credit of the Secretary of War, that he may draw a new requisition on which a new warrant can issue in payment of the claim. *Opinion of Oct.* 23, 1878, 16 Op. 193.

340. By act of March 3, 1879, chap. 182, an appropriation of a certain amount was made "to pay George H. Giddings, late contractor, for one month's extra pay on discontinuance of a portion of route No. 8076, Texas, which went into effect July 1, 1861, in accordance with the opinion of the Attorney-General."

Subsequently one D., claiming a right to a portion of the fund thus appropriated, filed a bill in the supreme court of the District of Columbia against the said Giddings, upon which an order was issued by the court forbidding him to meddle with the fund, and appointing a receiver to obtain and hold the same subject to the order of the court. A warrant having been issued for the payment of the amount to Giddings, pursuant to the terms of the statute, the receiver made application to the Postmaster-General for the delivery of the warrant to him. *Advised* that the payment cannot properly be made to any other than the person designated by Congress to receive it; that after such action by Congress the Executive Departments ought not to submit to the courts, upon any ground of comity, the question as to who should receive the fund; and that the application should be denied. *Opinion of July* 11, 1879, 16 Op. 367.

XXIV. Claims of the United States.

341. The Government has a valid claim against the vendors of the bark Florida under their bond of indemnity and the covenant of warranty in the bill of sale. *Opinion of Sept.* 10, 1862, 10 Op. 340.

342. The Government has a legal claim for damages against N. Kingsbury & Co. on account of their failure to fulfill their contract with the Navy Department for the delivery of blankets and blue flannel. *Opinion of June* 30, 1865, 11 Op. 263.

343. The Secretary of the Navy is not bound to compel the payment of damages if he is of opinion that their default was the result of the failure of the Government to pay their accounts, and it could not have been avoided by the proper efforts of the parties. *Ibid.*

344. By act of June 22, 1874, chap. 388, an appropriation was made to reimburse the Soldiers' and Sailors' Orphans' Home for certain moneys (the balance of a deposit of moneys theretofore appropriated for the Home by Congress) involved in the bankruptcy of Jay Cooke & Co. An offer having been made to the Secretary of the Treasury to purchase the claim against that firm for the amount due on account of said deposit: *Held* that this claim must now be treated as a claim belonging to the United States, and that the Secretary has no power to sell the same or to do more than receive for the United States whatever may be paid by the debtor, or his assignee, in discharge of the debt. *Opinion of Dec.* 15, 1879, 16 Op. 407.

CLERKS OF COURTS.

See also COMPENSATION, II; DISTRICT OF COLUMBIA, I; FEES AND COSTS.

1. The clerk of the circuit court of the District of Columbia, who is also clerk of the criminal court of the District, is bound to account to the Treasury for the fees which he receives in the latter capacity. *Opinion of March* 22, 1854, 6 Op. 388.

2. The clerks of the district courts of the United States in California are bound to render to the Treasury an emolument account equally with clerks of other districts. *Opinion of May* 1, 1854, 6 Op. 433.

3. The Secretary of the Interior is empowered by law to judge of the necessity of expenses of clerk-hire and other expenses in the offices of clerks of circuit and district courts where there is a surplus of fees above the statute allowance for salary, and to regulate the same in advance, subject to such modifications of amount, either by enlargement or diminution, and either periodical or occasional, as the satisfactory administration of justice in the several circuits or districts may require. *Opinion of Oct.* 13, 1855, 7 Op. 543.

4. The clerk of the courts of the United States in the District of Columbia is a collecting agent of the Government, and is held to account for all the fees of his office received or receivable, deducting therefrom the maximum allowed him by law. *Opinion of Dec.* 19, 1855, 7 Op. 610.

5. The clerks of the courts of the United States in the Territories of Minnesota, New Mexico, and Utah are not embraced by the provisions of the act of February 26, 1853, chap. 80, giving augmented fees to those officers in the Territory of Oregon. *Opinion of March* 8, 1856, 7 Op. 648.

COASTING TRADE.

See COMMERCE AND NAVIGATION, IV.

COAST SURVEY.

1. The costs of repairs and supplies furnished to certain vessels employed by the President in prosecuting the coast survey must fall upon the appropriation made by Congress for the survey of the coast. *Opinion of Oct.* 12, 1839, 3 Op. 479.

2. Yet if vessels are detailed from the Navy or from the revenue service for temporary service in the coast survey, they may be repaired from funds provided by Congress for the branch of the public service to which such vessels properly belong. *Ibid.*

COLLECTOR OF CUSTOMS.

See CUSTOMS LAWS, II.

COMMERCE AND NAVIGATION.

See also RIVERS AND HARBORS; SHIPPING; SHORES AND BEDS OF NAVIGABLE WATERS; SOUTH PASS OF THE MISSISSIPPI RIVER.

I. *Registry of Vessels.*
II. *Enrollment and License of Vessels.*
III. *Tonnage Duties.*
IV. *Foreign and Coasting Trade.*
V. *Fees Collected from Vessels.*
VI. *Officers of Steam-Vessels.*
VII. *Inspection of Steam-Vessels.*
VIII. *Obstruction to Navigation.*
IX. *Improvement of Navigable Waters.*

I. Registry of Vessels.

1. The benefit of the registry of an American vessel is lost to the owner during his residence in a foreign country; but upon his return to this country the disability ceases. *Opinion of Nov.* 24, 1821, 1 Op. 523.

2. The fact that during the foreign residence of the American owner the vessel carried a foreign flag does not work any divestiture of title, nor render the disability perpetual. *Ibid.*

3. The Spanish schooner Amistad having been condemned (not for any breach of the laws of the United States) and sold by order of the district court of the United States, and the purchaser having applied for a register: *Held* that he is not entitled to a register, but that documents showing the order of sale, its execution by the proper officer of the United States, and the purchase and title of the present owner, ought to be issued to him. *Opinion of Dec.* 14, 1840, 3 Op. 606.

4. Masters of American vessels entering foreign ports where there shall be an American consul, and remaining so long as that, by the local regulations, they are required to enter and afterwards to clear in regular form, are required to deposit their registers, &c., with such consul, irrespective of the purpose for which the port shall have been entered. *Opinion of Sept.* 26, 1849, 5 Op. 161.

5. A registered or enrolled American vessel voluntarily sold by her owner to a foreigner, and thus denationalized, is, equally with a foreign-built ship, incapable of receiving a new register or enrollment, although afterwards purchased and wholly owned by a citizen of the United States. *Opinion of March* 16, 1854, 6 Op. 383.

6. Under the act of December 23, 1852, chap. 4, a vessel built in the United States, but transferred to a foreign owner, and afterwards wrecked in the waters of the United States, may be allowed an American register by the Secretary of the Treasury. *Opinion of April* 16, 1860, 9 Op. 424.

7. Under the provisions of the first and fourth sections of the act of December 31, 1792, chap. 1, no vessel in which a foreigner is directly or indirectly interested can lawfully be registered as a vessel of the United States, nor can it be deemed a vessel of the United States or entitled to the benefits or privileges appertaining to a vessel of that description. *Opinion of Dec.* 17, 1873, 14 Op. 340.

8. So where a vessel has been registered, but the registry was obtained by a false oath as to its ownership, the vessel being at the time owned in whole or in part by foreigners, it cannot be deemed a vessel of the United States. *Ibid.*

9. *Semble* that the Virginius, though registered as an American vessel, was in fact owned by foreigners, and that the registry thereof was fraudulently obtained; and hence, at the time of her capture by the Spanish man-of-war Tornado, she had no right, by virtue of that

registry, as against the United States, to carry the American flag. *Ibid.*

10. Yet while upon the high seas, actually bearing an American register and carrying an American flag, she was as much exempt from interference by another power as though she had been lawfully registered; the question whether or not her register was fraudulently obtained, or whether or not she was sailing in violation of any law of the United States, being one over which such power could not then and there rightfully exercise jurisdiction. *Ibid.*

11. The word "wrecked," as used in section 4136 Rev. Stat., is applicable to a vessel which is disabled and rendered unfit for navigation, whether this condition of the vessel has been caused by the winds or the waves, by stranding, by fire, by explosion of boilers, or by any other casualty. *Opinion of Dec.* 5, 1877, 15 Op. 402.

12. To authorize the issue of a register under that section, it is sufficient if the cost of repairing the vessel—as well where, in so doing, the original plan of the vessel is departed from and changes in her construction and internal arrangement are made, new machinery, new appliances for her navigation, and other improvements introduced, as where the vessel is simply restored to what she originally was—equals three-fourths of her value when repaired. *Ibid.*

II. Enrollment and License of Vessels.

13. Steamboats owned by citizens of the United States may be enrolled and licensed, although they may have been employed in the rebel service under papers issued by the rebel authorities. *Opinion of Oct.* 2, 1865, 11 Op. 359.

14. Under section 4371 Rev. Stat., and the act of April 18, 1874, chap. 110, vessels usually called canal-boats, of more than five tons burden, trading from place to place in a district, or between different districts, on navigable waters of the United States (except such as are provided with sails or propelling machinery of their own adapted to lake or coastwise navigation, and also such as are employed in trade with the Canadas), are exempt from license or enrollment as well where in the trade in which they are engaged they do not enter a canal of a State as where their voyages are partly on such navigable waters and partly on a State canal. *Opinion of Oct.* 19, 1875, 15 Op. 52.

15. The act of 1874 does not contemplate boats employed exclusively on the "internal waters" of a State where the same are not also navigable waters of the United States, nor boats employed exclusively on the "canals of a State." It contemplates boats which are employed on navigable waters of the United States *as well as* on the canals or internal waters of a State. *Ibid.*

16. The rule as to exemption from enrollment or license provided by that act is not confined in its operation to waters within the interior of each State, but extends to any waters coming under the denomination of navigable waters of the United States, irrespective of their geographical location. *Ibid.*

17. The act of April 18, 1874, chap. 110, does not exempt from the license required by section 4371 Rev. Stat. a vessel of more than five tons burden, answering to the description of a canal-boat, which is engaged in trade between different ports or districts on navigable waters of the United States, and which has never been used on a canal, was not intended to be used there, and does not in its present employment enter a canal. Opinion of October 19, 1875 (15 Op. 52), to that extent overruled. (See NOTE, 16 Op. 248.) *Opinion of Jan.* 13, 1879, 16 Op. 247.

18. It is the *use* made of the vessel, not its mechanical structure, which determines whether it is or is not entitled to the exemption allowed by that act. *Ibid.*

19. The provision in the act of June 30, 1879, chap. 54, which exempts from enrollment, registration, or license "any flat-boat, barge, or like craft for the carriage of freight, not propelled by sail or by internal motive power of its own, on the rivers or lakes of the United States," has reference solely to vessels of that description built within the United States and owned by citizens thereof. It does not extend to foreign-built craft. *Opinion of Sept.* 16, 1880, 16 Op. 563.

III. Tonnage Duties.

20. Neither the President nor Secretary of the Treasury has power to remit the tonnage duty assessed with reference to the character

of the vessel, officers, and crew, nor to remit the penalty of a bond to return seamen. *Opinion of Nov.* 3, 1843, 4 Op. 273.

21. Vessels belonging to citizens of the British North American provinces entering otherwise than by sea at any ports of the United States on our northern, northwestern, and northeastern frontiers, are not liable to the tonnage duty imposed by section 15 of the act of July 14, 1862, chap. 163, if that duty is in excess of the tonnage duty on vessels entering otherwise than by sea at any of the ports of the British possessions on the same frontiers. *Opinion of May* 16, 1863, 10 Op. 482.

22. Section 2 of the act of March 2, 1831, chap. 98, is not repealed or affected by section 15 of the act of July 14, 1862, chap. 163, imposing an additional tonnage duty on vessels entering at the custom-houses of the United States. *Ibid.*

23. The Revised Statutes have made no change in the law respecting tonnage duties upon vessels engaged in foreign commerce. The substance of that law is correctly expressed in the Treasury circular of June 6, 1874, and no reason is perceived for changing the directions therein given. *Opinion of Aug.* 17, 1874, 14 Op. 450.

24. Under sections 4219, 4225, and 4371 Rev. Stat., certain foreign vessels, when found trading between district and district, &c., are liable to tonnage dues (including light-money) amounting to $1.30 per ton. *Opinion of Aug.* 19, 1875, 15 Op. 35.

25. Barges for the carriage of freight, not propelled by sail or by internal motive power of their own, of twenty tons burden or upward, which were built in Canada but are owned by American citizens, are liable to the payment of tonnage as prescribed by section 4371 Rev. Stat. when found trading between district and district. *Opinion of Sept.* 16, 1880, 16 Op. 563.

IV. Foreign and Coasting Trade.

26. The third section of the act of 20th July, 1790, chap. 30, is not now in force, in consequence of the operation of the act of March 1, 1817, chap. 31. But the act of 1817 does not repeal the twenty-fourth section of the act of 18th February, 1793, chap. 8. *Opinion of Nov.* 1, 1830, 2 Op. 392.

27. The reciprocity act of March 1, 1817, chap. 31, does not permit even an indirect carrying trade by foreign ships. Belgian vessels carrying hides and wool from Buenos Ayres to Boston come within the prohibition of and are subject to the forfeitures denounced by it. *Opinion of June* 30, 1842, 4 Op. 69.

28. Foreign vessels owned wholly by citizens of the United States may be lawfully engaged in the coasting trade; but the cargoes must consist of domestic goods other than distilled spirits. *Opinion of July* 20, 1843, 4 Op. 189.

29. Subjects of foreign powers are, by the act of March 1, 1817, chap. 31, incompetent to import any goods, wares, or merchandise from one port of the United States to another in any vessel of which they may be the owners in whole or in part; yet citizens of the United States are untouched by the act, and left to the enjoyment of the privileges conferred by the acts of December 31, 1792, chap. 1, and February 18, 1793, chap. 8. *Ibid.*

30. The only liability incurred by foreign-built vessels wholly owned by citizens employed in trade from port to port in the United States is that of paying the tonnage duties chargeable upon foreign vessels. *Ibid.*

31. The owners of registered vessels engaged in the coasting trade are subject to the payment of hospital-money by the act of 1st March, 1843, chap. 49, and collectors are required to collect it from the seamen, masters, and owners. *Opinion of Aug.* 15, 1843, 4 Op. 233.

32. Foreign vessels, except steamboats employed on rivers or bays, &c., may carry passengers from port to port in the United States, subject to the conditions as to fees, tonnage duties, &c., prescribed by the act of February 18, 1793, chap. 8, and other laws of the United States. *Opinion of Nov.* 2, 1843, 4 Op. 270.

V. Fees Collected from Vessels.

33. In view of the absence of anything in the Revised Statutes indicative of an intent to change the purpose for which the fees enumerated in section 4381 were originally established, or to introduce a new rule of distribution: *Held* that notwithstanding the revisal omits the provision of the act of 1793 regulating the distribution of such fees, they should be distributed, as they have heretofore been, under the rule prescribed by that act. (See

NOTE, 15 Op. 45.) *Opinion of Sept.* 11, 1875, 15 Op. 44.

VI. Officers of Steam-Vessels.

34. A naval officer cannot lawfully serve as master of a private steam-vessel in the merchant service without having previously obtained the license required by section 4438 of the Revised Statutes, although he may be eligible by virtue of his commission to take command of a steam-vessel of the United States in the naval service. *Opinion of Oct.* 26, 1875, 15 Op. 61.

VII. Inspection of Steam-Vessels.

35. Where a steam-tug was owned by the Government and used by the War Department in towing dredging-machines and scows, and for other like purposes: *Held* that it was not subject to the inspection laws of the United States relating to steam-vessels, and that unlicensed pilots and engineers might lawfully be employed upon her. *Opinion of June* 1, 1870, 13 Op. 249.

36. Public vessels, within the meaning of the inspection and navigation laws, are vessels owned by the United States and used by them for public purposes. *Ibid.*

37. Those laws do not warrant any distinction between public vessels under the control of the Navy Department and public vessels under the control of any other Department of the Government. *Ibid.*

38. By act of May 2, 1878, chap. 80, an American register or enrollment was authorized to be issued to the Canadian-built propeller East, by the name of The Kent. The vessel was dismantled as a *steamer*, and subsequently enrolled under that act as a *barge*. Afterwards the machinery was replaced in her; but the inspectors of steamboats declined to give her a certificate of inspection, the boiler not being constructed of *stamped* iron, as required by section 4428 Rev. Stat. *Held* that the act of 1878 was executed by the enrollment of the vessel as a barge; and that the boiler, being then no part of the vessel, was not nationalized under that act, nor entitled to pass inspection without being stamped. *Opinion of Dec.* 22, 1880, 16 Op. 680.

VIII. Obstruction to Navigation.

39. Obstructions to navigation in the navigable waters of the United States, whether by States or by individuals, constitute acts of pu presture, and there is remedy in such case *ex officio* information in the name of the A torney-General of the United States. *Opini of Oct.* 19, 1853, 6 Op. 172.

40. Where Congress (by act of July 25, 186 chap. 233) appropriated a sum of money, to expended under the direction of the Secreta of War, for the removal of a wreck near t harbor of New York, and the Secretary of W contracted with a company to remove t wreck: *Held* that the contractors had the rig to proceed with the work as against any pe sons employed by the owners, and that t Secretary of War had power to aid them wi all the necessary force to enable them to r move the obstruction. *Opinion of Sept.* 2 1868, 12 Op. 494.

41. In view of the practical difficulties preventing the obstructions to navigation me tioned in the case considered by a resort legal proceedings: *Advised* that the attentic of the proper committee of Congress be calle to the subject, and penal legislation recon mended. *Opinion of Nov.* 17, 1870, 13 O 342.

42. In the absence of legislation by Congre upon the subject of the improvement of t harbor of Saint Louis, or of the navigation the Mississippi River at that point, no one authorized to institute judicial proceedings behalf of the United States against the city Saint Louis for the abatement as a nuisan of the Bryan street dike, constructed by th city in said river. The anticipation tha should such legislation hereafter be adopte the dike will be an obstacle, is no ground interference. *Opinion of Oct.* 11, 1875, 15 O 515.

43. Where a vessel put into harbor "in furious storm," and, leaking badly, was r ashore, thereupon becoming a wreck, whi forms an obstruction to navigation: *Held* th (the wreck appearing to have been caused stress of weather, and not through any fault misconduct on the part of the master and cre the owners of the vessel are under no legal o ligation to remove it, and that the case do not warrant the institution of proceedings that end against them. *Opinion of Jan.* 4, 187 15 Op. 71.

44. Where a dike was being constructed an iron company in the Ohio River, leadi

from the shore to deep water, which it was apprehended by persons engaged in navigating that river would obstruct its navigation, and application was made by the latter to the engineer officers of the United States to interfere: *Held* that in the absence of Congressional legislation the public authorities of the United States have no power to deal with such a matter. *Opinion of Jan.* 12, 1876, 15 Op. 526.

45. Congress having made an appropriation for the improvement of the Connecticut River, to be expended under the direction of the Secretary of War, the latter has power, under this legislation, to remove a wrecked vessel lying in that river, without waiting until it is abandoned, if in his judgment it constitutes an obstruction to navigation. *Opinion of May* 24, 1877, 15 Op. 285.

IX. Improvement of Navigable Waters.

46. Under the act of March 3, 1875, chap. 166, to aid in the improvement of the Fox and Wisconsin Rivers, the officers in charge of that work cannot acquire land needed therefor by purchase directly from the owner, but must have recourse to condemnation. *Opinion of April* 11, 1879, 15 Op. 31.

47. The War Department has not authority, under the provisions of the acts of March 3, 1879, chap. 181, and June 10, 1879, chap. 15, relating to the improvement of the Kentucky River, to enter upon the locks and dams belonging to the State of Kentucky for the purpose of putting them in repair until the State shall have ceded title to and jurisdiction over them, so as to vest these in the United States, or until, after proper proceedings for condemnation had, the title shall be acquired by, and the jurisdiction shall by act of the State be transferred to, the United States. *Opinion of Dec.* 15, 1879, 16 Op. 405.

48. The property of an individual in a bar or other part of the bed of a navigable river is subject to the public right of navigation, and to the right of the public to regulate, control, and divert the flow of the water therein in the interests of navigation; and where the stream is a navigable river of the United States the right thus to regulate, control, and divert the flow of water belongs to Congress. Damage resulting to the individual proprietor from the exercise of that right is not a proper subject of compensation. *Opinion of April* 27, 1880, 16 Op. 480.

49. Accordingly, where it was proposed to construct a dike in the Ohio River to improve its navigation (under an appropriation by Congress for the improvement of that river), extending from the shore on the south side of the river into the middle of the stream, crossing a sand-bar at the outer extremity, which is under water at all times except when the river is at its low-water level or within a few feet thereof: *Advised* that the United States would incur no liability to the owner of the sand-bar by reason of any washing away of the same, or other damage thereto resulting from the construction of the dike; that the right of the United States thus to occupy the bar for the improvement of navigation is paramount to the right of the owner, and must prevail over the claims of the latter. *Ibid.*

50. Where certain parties claiming the land formed by accretion along the line of the piers erected by the United States at the mouth of Grand River, Ohio, proposed to sell the same, with the river frontage bordering thereon, for railroad purposes, the design of the party proposing to purchase being to build on the premises substantial docks upon such lines as the Government shall indicate: *Advised* that such river frontage is affected by the rights of the United States only so far as the navigation of the river and the maintenance of works constructed for the improvement thereof are concerned; that those rights do not preclude the owner from making any use of his property which does not obstruct the one or interfere with the other of these objects; and that the intended use of the river frontage by the purchaser (in view of the report of the engineer officer in charge) would not conflict with any right of the United States in the premises. *Opinion of May* 10, 1880, 16 Op. 487.

51. By the act of June 14, 1880, chap. 211, Congress made an appropriation for the improvement of Oakland harbor, in California, and provided that the same should not be available "until the right of the United States to the bed of the estuary and training-walls of this work is secured, free of expense to the Government, in a manner satisfactory to the Secretary of War." The estuary here referred to is a navigable water of the United States,

and the training-walls of the work are located on the shore below high-water mark. *Held* (1) that the statute does not contemplate that the United States shall have necessarily an absolute title to the bed of the estuary and to such portions of the shore as are occupied by the training-walls; (2) that under the power to regulate commerce, a power which includes that of regulating and improving navigable waters, the United States now have a right (which is deemed sufficient in this case) to use the bed and shore of the estuary for the purposes of said improvement by erecting training-walls or any other appropriate structure thereon, and that the proprietor of the soil can make no complaint of such use. *Opinion of June* 28, 1880, 16 Op. 535.

52. On examination of the provisions of the act of the Georgia legislature approved October 8, 1879, and upon considerations stated in the opinion: *Held* that payment of the $1,000 awarded under that act to the owner of the point on Fig Island, which is contemplated to be removed by the United States in the work of improving the Savannah River, cannot be paid out of the amount appropriated for the continuance of that work; and *advised* that special legislation by Congress, providing for the payment, should not be had until the express assent of the State of Georgia to the acquisition and removal of the land by the United States is obtained. *Opinion of July* 10, 1880, 16 Op. 541.

COMMISSIONER OF INTERNAL REVENUE.

See also INTERNAL REVENUE.

1. The Commissioner of Internal Revenue is not authorized by law to take charge of lands acquired by the United States in satisfaction of judgments recovered on the official bonds of collectors of internal revenue, and, with the approval of the Secretary of the Treasury, to dispose of the same by sale or otherwise. *Opinion of Sept.* 25, 1878, 16 Op. 144.

2. Section 3208 Rev. Stat. does not devolve upon the Commissioner of Internal Revenue the charge of real estate forfeited under the internal-revenue laws where the forfeiture is enforced by proceedings *in rem*. *Opinio* 18, 1878, 16 Op. 186.

3. But the custody of real estate s in satisfaction of a pecuniary forfeitur under those laws is by that section d upon the Commissioner. *Ibid.*

COMMISSIONER OF PENSI

See also PENSIONS.

There is no appeal from the Comm to the President. *Opinion of Aug.* 4, Op. 515.

COMPENSATION.

See also FEES AND COSTS.

I. *Generally.*
II. *Officers, &c., in the Civil Service.*
III. *Officers, &c., in the Military Ser*
IV. *Officers, &c., in the Naval Servic*
V. *Officers, &c., in the Marine Corp*
VI. *Counsel Employed by Head of De*
VII. *Where Officer Holds more than O*
VIII. *Extra Pay.*
IX. *Withholding Pay.*

I. Generally.

1. In the absence of constitutional re the future compensation of a public of be altered at pleasure by the legislat ing his incumbency, without violat legal right vested in him by virtue o pointment. *Opinion of June* 18, 187 317.

II. Officers, &c., in the Civil Se

2. A marshal is not entitled to the sion of 1½ per cent. under act of 2 ruary, 1799, chap. 19, upon specie c as in cases where he sells vessels a property. *Opinion of July* 26, 1814, 1

3. Navy agents may be allowed year over and above office-rent, clerk-h &c., under act of 3d March, 1809, c *Opinion of June* 20, 1816, 1 Op. 188.

4. The district attorney of New Jersey is entitled to special compensation for attending a State court in behalf of the United States, and for attending the taking of depositions, and for disbursements in the suit; but if the cause be removed to the circuit court of the United States and be there attended to by him, his compensation is that which district attorneys are entitled to under the act of February 28, 1799, chap. 19, being the highest fees which are allowed by the laws of New Jersey for similar services in the supreme court of that State. *Opinion of July* 31, 1820, 1 Op. 385.

5. The surveyor of Petersburg is entitled to the salary fixed by law, he having been duly commissioned as a surveyor, having been called on to perform, and having faithfully performed, the duties of the office, even though he did not reside there, no residence being prescribed in the commission. *Opinion of Aug.* 10, 1824, 1 Op. 686.

6. Compensation to a register or receiver of a land office for clerk-hire is not legal unless there shall have been an actual expenditure for clerk-hire by them. *Opinion of March* 20, 1828, 2 Op. 84.

7. Where the register or receiver performs the whole duty himself his compensation is the fees given by the act of March 2, 1821, chap. 12, and the half per cent. given by the act of May 22, 1826, chap. 152. *Ibid.*

8. The President may, in his discretion, advance money to a minister going abroad over and above his outfit. *Opinion of June* 15, 1829, 2 Op. 204.

9. As there are no fees prescribed for attendance by district attorneys on State courts, they should receive a reasonable compensation for such service. *Opinion of Feb.* 18, 1830, 2 Op. 319.

10. The act of March 23, 1830, chap. 40, providing for the taking of the fifth census, permits the marshals to assign to themselves parts of their respective districts, but does not make any provisions under which they can lawfully receive any part of the compensation allowed to assistants. *Opinion of April* 21, 1830, 2 Op. 339.

11. Assistants of marshals have a perfect claim on the Government for the payment of the compensation to which they are entitled, as soon as they have complied with the requisitions of the law. *Opinion of March* 21, 1831, 2 Op. 416.

12. No higher allowance can be made to clerks employed in the Patent Office than is authorized by the act of 20th April, 1818, chap. 87. *Opinion of Aug.* 7, 1831, 2 Op. 455.

13. There is no act of Congress which makes the United States liable for the marshal's fees in the case of the discharge of a debtor from imprisonment, and the Treasury Department, therefore, is not authorized to pay a claim made for them. *Opinion of Aug.* 19, 1831, 2 Op. 459.

14. There is no act of Congress warranting the practice of the Government in paying foreign ministers and consuls to whom salaries are given a quarter's salary after they have presented their letters of recall. *Opinion of Nov.* 30, 1831, 2 Op. 470.

15. The present surveyor of the city of Washington having been appointed by the Commissioner of Public Buildings, with the understanding that no salary was to be claimed, he is entitled to no part of the fund appropriated for the District. *Opinion of Dec.* 1, 1831, 2 Op. 471.

16. By the act of 20th April, 1818, chap. 87, the number and compensation of the clerks to be employed by the Navy Commissioners is fixed; and the same law provides that no higher or other allowance shall be made to any clerk in the Departments and offices mentioned therein than is thereby authorized. Wherefore, such of the clerks as have been overpaid should refund the excess to the Treasury. *Opinion of Sept.* 12, 1833, 2 Op. 582.

17. It is improper to allow salaries to clerks absent from the country and not actually employed in the duties of the office. *Ibid.*

18. The sanction of the Navy Commissioners to the excessive salaries erroneously given does not give the clerks who have received the excess a right to retain it. *Ibid.*

19. Where the Navy Commissioners had employed a clerk at a stipulated sum, less than the maximum allowed by the act of April 20, 1818, chap. 87, and the difference between the maximum and the amount actually paid was drawn in his name and paid over to other persons, who have since been required to refund it to the Treasury, and the said clerk comes forward to demand it: *Held* that he has no

claim to the moneys thus refunded. *Opinion of Jan.* 6, 1834, 2 Op. 591.

20. District attorneys not being required by the laws defining their general duties to attend State courts, nor upon judges out of court, if their services are called for therein, or on other special occasions, and the fees taxed by them in such State courts cannot be recovered, or are inadequate, they should be paid a fair compensation out of any moneys appropriated to the special objects in reference to which the services were rendered, or, in some cases, out of the judiciary fund usually provided in the general appropriation bill. *Opinion of March* 7, 1836, 3 Op. 45.

21. The salaries of judicial and other officers appointed for the Territory of Michigan are to be paid until the State shall have been actually admitted into the Union by the proclamation of the President. *Opinion of Dec.* 29, 1836, 3 Op. 170.

22. The clerks and messengers of the Pension Office, authorized by the act of 9th May, 1836, chap. 60, are entitled to the increase of salaries provided by the enacting clause of the third section of the act of 3d March, 1837, chap. 33. *Opinion of March* 25, 1837, 3 Op. 181.

23. The salaries of three clerks only in the General Land Office were fixed in the act reorganizing it. All the residue, including the messengers, are entitled to the percentage granted by the act of 3d March, 1837, chap. 33. *Opinion of March* 31, 1837, 3 Op. 193.

24. The reference to the fees of the State courts contained in the acts of September 24, 1789, chap. 20, and February 28, 1799, chap. 19, does not apply to the courts nor to the district attorneys of States where there are no fees by law, but refers to those where the laws give taxable fees. *Opinion of July* 5, 1837, 3 Op. 252.

25. The United States should, in such cases, make a reasonable allowance to their attorneys in the States where the latter can look only to their employers for compensation. *Ibid.*

26. The secretary of the commander of the surveying and exploring expedition has no legal right to compensation for services rendered anterior to the appointment of the commander and the receipt of formal notice of his appointment as secretary; yet if he actually rendered services in respect to that expedition before, and, in the judgment of the President, has an equitable claim, he may be paid out of the ap propriation made by the act of May 14, 183 chap. 62, for the expedition, without sendin the claim to Congress. *Opinion of Aug.* 1 1838, 3 Op. 357.

27. By the acquiescence of the Governmer and the construction given in several judici decisions entitled to respect, the act of the 7t of May, 1822, chap. 107, in relation to t compensation of officers of the customs, is n deemed to work a repeal of the act of the 2 of March, 1799, chap. 23, in relation to t same subject. *Opinion of April* 11, 1839, 3 O 449.

28. Agents for paying pensions are entitle to have their necessary contingent expens allowed, notwithstanding the act of April 2 1836, chap. 55, as the prohibition of that a may be well satisfied by stopping payment the 2 per cent. commissions which had bee theretofore allowed for disbursing pensio moneys. *Opinion of Oct.* 12, 1839, 3 Op. 48

29. Where a marshal received, in the d course of law, processes of summons and sul pœna for the same witnesses (it being the usu mode of procuring the attendance of witness in the court from which they issued) and serve the same as required, he is entitled to his fe for both services, on their being allowed a certified by the district judge. *Opinion of Fe* 14, 1840, 3 Op. 497.

30. The same individual having been a pointed, under the act of 30th of June, 183 chap. 161, a superintendent of Indian emigr tion, at a stipulated salary, and afterwards commissioner to negotiate a treaty with t Miamies, at a per diem compensation, ca under the thirtieth section of said act, recei but one compensation during the same perio *Opinion of April* 15, 1840, 3 Op. 511.

31. Where, under special instructions, di trict attorneys render services of various sort necessary to discover criminals, and in procu ing adequate evidence, they may be allowed adequate compensation by the proper Depa ment. *Opinion of April* 17, 1840, 3 Op. 515.

32. Where it is the settled practice of t court to procure the attendance of witness by the service both of the process of summo and of subpœna, and an order issues to t marshal to summon witnesses, that officer entitled, for performing the order, to the co pensation escribed for actually summoni

the witness, and also to the compensation prescribed for serving the subpœna. The marshal cannot disregard the orders or process issued by the court, even though they are superfluous, but must execute such as shall be issued to him in the ordinary practice, and for which he is entitled to the prescribed fees at the hands of the Government. *Opinion of May 16, 1840*, 3 Op. 536.

33. The taxation of the court and the allowance and certificate of the judge are conclusive upon the accounting officers when the service or purpose is enumerated in the act of Congress, and the sum allowed therefor is not exceeded. *Ibid.*

34. The marshal cannot be allowed more for the service of a summons, where a subpœna and summons shall have been directed to him in order to obtain the attendance of a single witness, than the sum prescribed for summoning a single witness. *Ibid.*

35. Where collectors, naval officers, and surveyors are required by the Secretary of the Treasury to perform services which are unconnected with their official duties, the necessary expenses actually incurred in the performance of those extra duties may be allowed them. *Opinion of July 7*, 1840, 3 Op. 563.

36. The compensation of officers of the customs is to be regulated and graduated by the importations of the present (1840) year, the act of July 21, 1840, chap. 99, merely substituting the present for the year 1838. *Opinion of Aug. 26*, 1840, 3 Op. 587.

37. The district attorney for the District of Columbia is entitled to a reasonable compensation, over and above his salary and stated fees, for attending, on the part of the United States, during the taking of certain depositions in said District in a case pending before the circuit court of Missouri. *Opinion of Dec. 5*, 1840, 3 Op. 599.

38. The district attorney of Vermont is entitled to an allowance for expenses incurred in numerous journeys, undertaken, with the approbation of the Solicitor of the Treasury, for the purpose of securing certain payments due to the United States, and a further allowance for compensation in superintending the sale of certain real estate in Vermont. *Opinion of Jan. 21*, 1841, 3 Op. 612.

39. Under the proviso of the act of 3d March, 1841, chap. 35, relating to the compensation of clerks, attorneys, counsel, and marshals in the district courts of the United States, those officers are required to ascertain, as far as practicable, whether all the fees, emoluments, and receipts of their office, as allowed under anterior laws, will make their entire compensation exceed the sum of $1,500 per annum; and if it be reasonably certain that they will, the officer must be confined in his charges to the rates of fees prescribed by the proviso. If they will not, or if the question be fairly doubtful, the old rule may be adhered to. *Opinion of April 13*, 1841, 3 Op. 627.

40. So it is therein provided that those officers shall receive the same fees that may be allowed by the laws of the State where such district courts are held to the clerks, &c., in the highest courts of the said State in which the like services are rendered; but for services the like of which are not rendered in the "highest" court, his fees must be the same as are allowed in the highest court in which they are rendered. *Ibid.*

41. A clerk of court ought not to be held accountable to the Treasury for any amount of his fees which he may have failed to collect after using, with ordinary diligence, the means of collection that are usually employed by clerks for the collection of fees for their benefit. *Ibid.*

42. The act of 3d of March, 1841, chap. 35, making appropriations for the civil and diplomatic expenses of the Government for the year 1841, was intended to restrain the incomes or annual emoluments of the officers therein mentioned as such, from all sources whatever connected with the performance of the duties of their office, to the sums therein mentioned. *Opinion of Sept. 29*, 1841, 3 Op. 658.

43. Whether the allowance for agency of marine hospitals, superintendence of light-houses, and certificates for wines and teas are fairly included within the purview of the statute depends on the question whether these objects come within the sphere of the collector's duty. *Ibid.*

44. The word "rate" of compensation, as the same is employed in the act and resolution of 1812 to define the compensation of the superintending clerk of the census, construed to mean *the sum paid;* and a claim for a greater

amount, on the ground of an increase of typographical matter, rejected. *Opinion of Feb.* 17, 1842, 4 Op. 3.

45. The person appointed Secretary of the Treasury *ad interim* has a claim upon the Government for the usual, or, if there be no usual, for a reasonable, compensation for his services in that capacity; but an appropriation is necessary. *Opinion of Nov.* 26, 1842, 4 Op. 122.

46. A person filling the offices of clerk of a circuit court and clerk of a district court is entitled, under the act of May 18, 1842, chap. 29, to the salaries of both offices. *Opinion of March* 15, 1843, 4 Op. 145.

47. The salaries attach to the offices for the services rendered in discharge of the duties thereof; and there is no law prohibiting the discharge of the duties of both offices by the same person. *Ibid.*

48. Mileage fees to district marshals whilst in pursuit of a person for the purpose of service of process upon him have been passed at the Department; and as it seems equitable, although not within a rigid construction of the law (act of February 28, 1799, chap. 19), it may be well to adhere to the practice. *Opinion of April* 3, 1843, 4 Op. 168.

49. The act of March 2, 1799, chap. 23, giving authority to collectors to employ occasional inspectors and others in aid of the revenue, did not authorize them to employ persons to perform clerical duties in custom-houses, and to pay them out of the revenue. *Opinion of Aug.* 15, 1843, 4 Op. 230.

50. The expense of clerk-hire in the custom-houses cannot be charged upon the Treasury, except in the cases provided for by the act of July 7, 1838, chap. 169. *Ibid.*

51. The act 7th July, 1838, does not change the aspect of the case of clerks as provided by act 7th May, 1822, chap. 107, its object only being to allow them, to a certain extent, the fees and emoluments which, but for the operation of the acts of July 14, 1832, chap. 227, and March 2, 1833, chap. 54, they would have received, and limiting allowances according to the importations of the year. *Ibid.*

52. In the absence of any statute regulation concerning the compensation of commissioners of circuit courts, the courts themselves may fix the rate. Where rates have not been fixed, the amount may be ascertained by a reference to the local law of the State providing for similar services by local magistrates. *Opinion of Aug.* 16, 1843, 4 Op. 233.

53. Proceedings under the several acts of Congress before these commissioners in behalf of the United States are properly chargeable to the United States, and should be paid. *Ibid.*

54. Collectors of customs, acting as superintendents of light-houses, are entitled to commissions upon disbursements made by them in that capacity, subject to the limitation imposed by the eighteenth section of the act 7th May, 1822, chap. 107. *Opinion of Sept.* 22, 1843, 4 Op. 249.

55. Where an officer of the General Government employs an auctioneer of a Territory to make sales therein which such officer was required himself to make, such auctioneer has the right to the percentage which the laws of the Territory allow him to retain. *Opinion of Oct.* 3, 1843, 4 Op. 257.

56. The compensation of collectors, naval officers, and surveyors depends on the amount received from the sources enumerated in the acts of May 7, 1822, chap. 107, and March 3, 1841, chap. 35, read together—to the maximum of $4,000, $3,000, and $2,500, for commissions upon duties, and to $2,000 from the sources enumerated in the fifth section of the said act of 1841—and is in each case dependent on the fund derived from such sources, respectively. *Opinion of Oct.* 20, 1843, 4 Op. 261.

57. Collectors of customs who are made superintendents of light-houses may receive commissions on their disbursements. *Opinion of Nov.* 3, 1843, 4 Op. 272.

58. The chief clerks of the Bureaus of Yards and Docks and of Construction, Equipment, and Repair are entitled to the pay of the chiefs of those bureaus whilst acting as such under the authority of the President; but they cannot receive the pay of chiefs and clerks at the same time. *Opinion of April* 23, 1844, 4 Op. 320.

59. In the case of William M. Blackford, chargé d'affaires to Bogota, who was superseded in office whilst within the United States on leave of absence, and who, on settlement of his account with the Executive Department, asked to be credited the usual infit of three months'

salary: *Held* that such infit cannot be properly allowed him without special authority from Congress. *Opinion of Sept.* 29, 1845, 4 Op. 443.

60. District attorneys in Louisiana and other States whose legislatures have omitted to provide any rate or scale of fees for legal services in their supreme courts are, nevertheless, entitled to a reasonable compensation for their official services; and as it has been the practice of the Treasury in such cases to allow bills of costs according to the rates certified and taxed by the judges for district attorneys in neighboring States as reasonable, when certified by one or more prominent members of the bar, such usage may be continued until Congress shall otherwise determine. *Opinion of Nov.* 10, 1845, 4 Op. 448.

61. A clerk in the Pension Office ordered to perform the duties of secretary to commissioners appointed to treat with a delegation of Indians is not entitled to extra compensation therefor, but must be limited to the compensation provided by law for his services as a clerk in the Pension Office. *Opinion of Jan.* 10, 1846, 4 Op. 464.

62. The compensation of receivers of public moneys for lands, including the provision for clerk-hire in their offices, is limited by the act of 20th of April, 1818, chap. 123, to $500 and a commission of 1 per cent. on the moneys received by them, provided that the whole amount shall not exceed $3,000. *Opinion of March* 13, 1846, 4 Op. 467.

63. The clerk-hire is a charge upon the commissions, and cannot be allowed as an extra charge. *Ibid.*

64. Nor is the register of the land office at Kalamazoo entitled to an extra allowance as compensation or reimbursement for money paid for clerk-hire in his office. The claim is not on a better footing than that of the receiver. *Opinion of March* 13, 1846, 4 Op. 472.

65. It is the duty of the Government to provide a way to make the salary and expenses of a minister abroad good to him at the capital of his residence. *Opinion of July* 20, 1846, 4 Op. 506.

66. If a minister be directed to draw on London for his salary and expenses, and there shall be a loss on the sale of his bills, it is the duty of the Government to make such loss good to him; and Mr. Wise, the American minister at Rio, having suffered a loss on his bills thus drawn on London, is entitled to indemnity. *Ibid.*

67. The appropriation made by the act of March 3, 1847, chap. 66, to defray the expenses of the commission which was appointed pursuant to the provisions of the act of June 27, 1846, chap. 34, to examine claims under the treaty of 1836 with the Cherokees, is not limited to the contingent expenses of the commission, but may be applied, if necessary, to the payment of the salaries of the commissioners and their secretary. *Opinion of May* 13, 1847, 4 Op. 578.

68. A second lieutenant in the revenue service who was dismissed from that service on December 1, 1842, and recommissioned on April 20, 1843, to take rank from date of his original appointment, is not entitled to pay during the time he was out of the service. *Opinion of July* 13, 1849, 5 Op. 132.

69. Pay is never to be allowed to officers except whilst they are in service, unless pursuant to some act of Congress providing for the particular case. *Ibid.*

70. Where the district attorney of Pennsylvania had, by the direction of the Postmaster-General, instituted several suits against toll-gate keepers and others to enforce the penalties prescribed by the ninth section of the act of 3d March, 1825, chap. 64, for sundry interruptions of the transit of the United States mails by exacting tolls upon passengers conveyed in the mail-coaches, and a *nolle prosequi* was subsequently entered by direction of a succeeding Postmaster-General in every case: *Held* that the said district attorney is fairly entitled to compensation from the United States for services rendered. *Opinion of Nov.* 13, 1849, 5 Op. 172.

71. The salaries of the Territorial officers of Oregon date from the time of their appointment, but are not payable until they reach the Territory and enter upon their official duties. *Opinion of Dec.* 21, 1849, 5 Op. 219.

72. Officers of the customs are not entitled to additional compensation under the provisions of the third section of the act of 7th July, 1838, chap. 169, the same having been rendered nugatory by the repeal of the act upon which it was based and the enactment of another law upon the subject. Their compensa-

tion is fixed by the act of July 21, 1840, chap. 99, which contains new and different provisions. *Opinion of March* 18, 1850, 5 Op. 233.

73. Where a surveyor of the port of Cincinnati neglected to collect certain duties properly certified by the collector at New Orleans as due and payable there in cash, but permitted the goods upon which they were chargeable to be delivered to the importers, he only retaining their bonds, taken pursuant to the act of March 2, 1831, chap. 87, and afterwards, being found in default at the Treasury for such duties, was superseded in office, and a portion of such duties subsequently collected and paid into the Treasury by the successor, to whom the bonds were turned over: *Held* that the delinquent surveyor is not, but that his successor is, entitled to the commissions established by law upon the duties thus collected and paid over. *Opinion of Dec.* 3, 1850, 5 Op. 278.

74. The Secretary of the Interior has authority, under section 19 of the act of May 23, 1850, chap. 11, to increase the salary or compensation of the clerks employed in the Census Office, provided that such increase does not raise their salaries above the compensation usually paid for similar services, nor above the sum of $1,000 per annum. *Opinion of Jan.* 25, 1851, 5 Op. 295.

75. These restrictions and limitations are explicit and peremptory; but subject to them the power of the Secretary is discretionary. *Ibid.*

76. The several acts of Congress regulating the compensation of postmasters invest the Postmaster-General with authority to allow them commissions on all moneys by them respectively collected in each quarter of the year. *Opinion of Feb.* 15, 1851, 5 Op. 301.

77. And postmasters are entitled to commissions on moneys collected for postage on foreign letters, which are payable by treaty to foreign governments, as well as upon moneys collected for postage on other matter conveyed in the mails. *Ibid.*

78. The secretary of the Territory of Oregon having received the salary of governor during the time he was the acting governor, cannot for the same time receive pay as secretary. *Opinion of Jan.* 10, 1852, 5 Op. 507.

79. The compensation allowed to pension agents by the second section of act of 20th February, 1847, chap. 13, does not extend to services rendered previous to the passage of the law. *Opinion of July* 19, 1852, 5 Op. 569.

80. Territorial judges absent from the Territory for a period of three months can obtain their salaries only on certificate of the President that the absence was for good cause. *Opinion of June* 18, 1853, 6 Op. 57.

81. Marshals are entitled to compensation for transporting witnesses in custody (though it be not mentioned by the statute) by analogy of the statute compensation for the transportation of criminals. *Opinion of June* 18, 1853, 6 Op. 58.

82. The salary of the American commissioner appointed under the convention of February 8, 1853, between the United States and Great Britain, commenced on his taking the oath of office; and he is entitled to the cost of transportation to and from London. *Opinion of June* 29, 1853, 6 Op. 65.

83. The provisions of the act of February 26, 1853, chap. 80, regulating the fees of district attorneys of the United States, and prohibiting the receipt of any fees except such as are therein specified, do not necessarily apply to services of a district attorney in the courts of one of the States. *Opinion of Feb.* 18, 1854, 6 Op. 299.

84. Special fees for counsel in the business of any one of the Departments are chargeable to the proper fund of such Department, and not to the judiciary fund. *Ibid.*

85. The salaries of all clerks in the Patent Office, like its other expenditures, are to be defrayed out of the patent fund. *Opinion of March* 4, 1854, 6 Op. 319.

86. The increase of salary for clerks of the first three classes provided by the act of April 22, 1854, chap. 52, applies to clerks of similar classes in the State Department. *Opinion of May* 10, 1854, 6 Op. 457.

87. The increase of salary provided by the act of April 22, 1854, chap. 52, does not apply to any clerks in the Department of State above the third class. *Opinion of May* 25, 1854, 6 Op. 464.

88. The clerks in the office of the Navy agent at Washington are not embraced by the provisions of the act of April 22, 1854, chap. 52, which augments the salaries of certain clerks of the Executive Departments. *Opinion of June* 8, 1854, 6 Op. 527.

89. For the performance of a duty not enu-

merated in the law regulating the fees of district attorneys (act of February 26, 1853, chap. 80) they are entitled to compensation, either in the analogy of the fees fixed by that act, or at the discretion of the head of the Department ordering the service. *Opinion of Jan.* 25, 1855, 7 Op. 46.

90. The laws prescribing a rate of salary for ministers resident and chargés d'affaires, which existed at the time of the passage of the act of March 1, 1855, chap. 133, are not affected by that act, and continue in full force. *Opinion of May* 25, 1855, 7 Op. 189.

91. Envoys extraordinary and secretaries of legation in office will, on the day fixed, be entitled to the benefits and subject to the deductions of the new provisions of that act regarding compensation, including salary, whether increased or not, and prohibition of outfit or infit, without reappointment by the President. *Ibid.*

92. The President may appoint envoys at the places where the present minister is a minister resident, and in that case the new envoy will be entitled to the salary prescribed by the act. *Ibid.*

93. The President may leave unchanged all the ministers resident; in which case they will each be entitled severally to the salary prescribed by the pre-existing acts of Congress. *Ibid.*

94. The salary prescribed by existing law for all the present ministers resident, except one, is $4,500; for that one, the minister to the Ottoman Porte, it is $6,000; which latter sum is the general statute compensation of ministers resident in all cases save where the lower salary is expressly prescribed by particular act of Congress. *Ibid.*

95. Although the appropriation act of March 3, 1855, chap. 175, in appropriating for the diplomatic service of the next ensuing fiscal year, provides in terms for envoys extraordinary only, still that appropriation is, by collation with express provision of previous laws, subject to draft for the compensation of diplomatic officers, of whatever rank, lawfully in office by appointment of the President. *Ibid.*

96. The rates and the mode of compensation, by the act of March 1, 1855, chap. 133, take effect in regard to all consuls at the places named and lawfully in office at the day fixed whensoever they have been or shall be appointed. *Opinion of June* 2, 1855, 7 Op. 243.

97. The several consuls for whom the act provides annual salaries must collect and pay over all fees for consular service to the Government. *Ibid.*

98. Consuls, commercial agents, vice-consuls, and consular agents, for whom salaries are not provided by the act, are entitled to continue to receive fees for consular service. *Ibid.*

99. The act does not repeal any fees except those which it expressly mentions, and leaves all others as they now stand by act of Congress or regulations of Department. *Ibid.*

100. The salaries of all judges of courts of the United States are due from the date of appointment; but the party does not become entitled to draw pay until he has entered on the duties of his office, or at least taken his official oath; for, until then, though under commission, he is not actually in office; and in some cases, as that of the Territorial judges of Oregon, Washington, Kansas, and Nebraska, salary, though due from date of appointment, cannot be drawn until the judge enters on duty in the Territory. *Opinion of June* 30, 1855, 7 Op. 304.

101. In the case of appointments and removals by the President, when the removal is not by direct discharge or an express vacating of the office by way of independent fact, but merely by the operation of a new commission or appointment, the virtue of the old commission ceases only when notice of the new commission is given to the outgoing officer either by the President, or by the new officer exhibiting his commission to the old one, or by other sufficient notice; and the old officer continues to be entitled to compensation down to the time of his ceasing to perform the duties of his office. *Ibid.*

102. Case of allowance to a commissioner, for running the boundary line between the United States and the Mexican Republic, of expenses of his return to the place of his domicile at the time of appointment. *Opinion of Feb.* 9, 1856, 7 Op. 627.

103. The clerks of the courts of the United States in the Territories of Minnesota, New Mexico, and Utah are not embraced by the provisions of the act of February 26, 1853,

chap. 80, giving augmented fees to those officers in the Territory of Oregon. *Opinion of March* 8, 1856, 7 Op. 648.

104. The fees of a marshal for bringing in and returning and the intermediate commitment of prisoners or witnesses, in cases pending before the commissioner, are embraced in the per diem allowance made by the act of February 26, 1853, chap. 80, for attendance of the marshal and his deputies at the trial. *Opinion of March* 22, 1856, 7 Op. 667.

105. The same rule applies for the same service in cases pending in the circuit or district court. *Ibid.*

106. A substitute, or vice-consul, left in charge of the consulate during the temporary absence of the consul, is to be compensated out of the statute emoluments of the office, subject to regulations of the Department. *Opinion of June* 17, 1856, 7 Op. 714.

107. An acting consul in charge of a consulate during actual vacancy of the consulate is entitled to receive the statute compensation of the office. *Ibid.*

108. The general maximum of the compensation of collectors of the customs accruing from salary, fees, commissions, and other statute sources of emolument, other than penalties and forfeitures, is that fixed by the act of May 7, 1822, chap. 107, namely, $4,000 per annum in the seven larger ports, and $2,500 in all other ports. *Opinion of Aug.* 25, 1856, 8 Op. 46.

109. The general maximum is increased by the act of March 3, 1841, chap. 35, which allows $2,000 more, provided the same be received from rents and storage. *Ibid.*

110. This addition is receivable by all collectors alike, but only from rents and storage, and is not allowable as a general charge on all the sources of emolument. *Ibid.*

111. These two maxima do not exclude the allowance to collectors of another special maximum of $500 for extra-official disbursements on account of light-houses and hospitals. *Ibid.*

112. *Quære* of penalties and forfeitures under existing statutes. *Ibid.*

113. The new maximum of the compensation of Navy agents provided by the act of March 3, 1855, chap. 198, takes effect on that day, and Navy agents in office on that day are to be allowed the pro rata part of their previous maximum down to that day, and then to commence on the new maximum. *Opinion of Sept.* 10, 1856, 8 Op. 93.

114. This maximum, although chargeable in the form of commissions on disbursements, is only to be allowed pro rata according to the time of service, as in the case of officers of the customs. *Ibid.*

115. Statement of the compensation of the revisers of the code of laws of the District of Columbia. *Opinion of Nov.* 18, 1856, 8 Op. 195.

116. The diplomatic and consular act of March 1, 1855, chap. 133, simply regulated the compensation of ministers and consuls, and did not require that they should be reappointed. Under that act consuls were entitled to a salary during the time they remained at their posts of duty. *Opinion of Sept.* 21, 1857, 9 Op. 89.

117. Under the act of August 18, 1856, chap. 127, a consul was to receive a salary not only for the time spent at the place of his official duty, but, in addition to that, for the time occupied in awaiting his instructions, in traveling to his post of duty, and in returning home at the close of his services. *Ibid.*

118. Under these laws each consul is entitled to be paid for his services according to the law which was in force when those services were rendered, without reference to the date of his commission. *Ibid.*

119. The provision in the eighth section of the act of 1856 forbidding the allowance of compensation for the time occupied in coming home by a consul who shall have resigned or been recalled for any malfeasance in office does not apply to the case of a consul who has resigned or been recalled without being guilty of any misconduct. The penalty of having to come home at his own expense is only to be inflicted upon the consul whose misbehavior has obliged the Government to recall him, or who resigns simply to escape a recall which he is conscious of deserving. *Ibid.*

120. The act of 4th August, 1854, chap. 242, and the joint resolution of 18th August, 1856, in respect to the annual salaries of laborers, relate only to persons regularly employed for manual labor in the Executive Departments. *Opinion of Sept.* 30, 1857, 9 Op. 117.

121. A district attorney can receive only

such compensation as the fee-bill (act of February 26, 1853, chap. 80) gives. *Opinion of May* 25, 1858, 9 Op. 146.

122. The services of a district attorney or other counsel in defending officers for official acts are and must always be rendered at the request of the head of a Department, and the legal compensation allowed for such services in the fee-bill is such sum as may be agreed on. *Ibid.*

123. A district attorney is entitled to his fee of $5 per day for the time necessarily employed in the preliminary proceedings of a criminal prosecution, both before and after the arrest. *Opinion of June* 7, 1858, 9 Op. 170.

124. A district attorney is to be paid by the day, and not by the case, for services in the examination of persons charged with crime. *Opinion of Oct.* 25, 1858, 9 Op. 242.

125. He is to be paid his per diem for services before any judicial officer. *Ibid.*

126. A district attorney is entitled to be paid his per diem for services before a person acting as a United States commissioner, although he had not been legally appointed. *Opinion of Nov.* 2, 1858, 9 Op. 251.

127. Under the act of June 22, 1854, chap. 61, the postmaster at New Orleans has a right to demand an allowance out of the postages of his office sufficient to make up his compensation and expenses, but his special allowance cannot otherwise be increased or diminished. *Opinion of Nov.* 10, 1858, 9 Op. 258.

128. A public minister who was at home at the time of his recall, and who was paid his salary down to the date of his recall, is not entitled in addition to compensation for such further time as would be necessarily spent in coming home from the seat of his mission. *Opinion of Nov.* 19, 1858, 9 Op. 261.

129. No district attorney can receive on any one day more than one per diem for the services of that day. *Opinion of March* 16, 1859, 9 Op. 292.

130. When the district attorney and his substitute are both necessarily employed in different courts on the same day, they are each entitled to a per diem allowance of $5. *Opinion of Dec.* 11, 1860, 9 Op. 526.

131. The strictly personal expenses of the commissioners under the convention with New Granada are not payable out of the contingent fund of the commission provided by the act of February 20, 1861, chap. 45. *Opinion of March* 28, 1862, 10 Op. 216.

132. The salary of a person appointed marshal of the United States consular court at Shanghai begins to run from the time he enters upon such duties as are preliminary to his departure for the field of his service, after taking the oath of office and giving the bond prescribed by law. *Opinion of May* 12, 1862, 10 Op. 250.

133. Mr. Brocchus is not legally entitled to any salary as associate justice of the Territory of New Mexico from the date of his appointment to that of his removal, having never visited the Territory, nor taken the oath of office, nor entered on the performance of his duties. *Opinion of June* 28, 1862, 10 Op. 307.

134. A district attorney is entitled to receive, for the prosecution of any civil action in which the United States are concerned before a Federal court of his district, only the fee provided by the act of February 26, 1853, chap. 80. *Opinion of June* 5, 1863, 10 Op. 489.

135. The twenty-first section of the act of June 30, 1864, chap. 174, allows a district attorney, in addition to his maximum compensation or salary, to retain $3,000 from the moneys received for services in prize cases during the year ending June 30, 1864. *Opinion of Sept.* 12, 1864, 11 Op. 79.

136. A district attorney is entitled to retain the compensation received for services rendered under the twelfth section of the act of March 3, 1863, chap. 76, in addition to the maximum compensation provided by the act of February 26, 1853, chap. 80, or in addition to any salary he may receive in lieu of such maximum compensation. *Opinion of Sept.* 20, 1864, 11 Op. 88.

137. Where a proceeding *in rem* under the internal-revenue laws is directed to be discontinued on the payment by the claimant of the legal costs which have accrued, the district attorney is not entitled to charge, under the eleventh section of the act of March 3, 1863, chap. 76, 2 per cent. on the value of the property. *Opinion of Sept.* 1, 1865, 11 Op. 329.

138. A district attorney cannot be allowed to retain 2 per cent. of any moneys realized in a suit under the revenue laws without a previous taxation of his account by the court. *Opinion of Nov.* 10, 1865, 11 Op. 393.

139. A district attorney is legally entitled to

compensation for examining the title to lands purchased by the Government. The amount may be agreed upon in advance, or may be fixed after the work is completed. *Opinion of March* 8, 1866, 11 Op. 433.

140. In a case in which the duty of a district attorney to appear on behalf of the United States springs from the request of the head of a Department, the legal fee for his services therein is the sum which the Department may agree to pay him. *Opinion of April* 29, 1867, 12 Op. 133.

141. The act of August 16, 1856, chap. 124, section 12, does not alter the compensation provided in such a case by the act of February 26, 1853, chap. 80. *Ibid.*

142. In a case within the terms of the act of 1856, the district attorney should be allowed such compensation as the proper head of Department may have agreed to pay him. The question whether fees in cases within the twelfth section of the act of August 16, 1856, are to be included in the emolument accounts of district attorneys not considered in this case. *Ibid.*

143. A district attorney who is employed by the Attorney-General to argue a case in which the United States is concerned as special counsel before the Supreme Court is entitled to receive a proper compensation for his services; and such compensation is not returnable in his emolument account, and is no part of his maximum allowance provided by the act of February 26, 1853, chap. 80. *Opinion of Oct.* 22, 1867, 12 Op. 284.

144. Neither surveyors, not discharging the duties of collectors, nor naval officers are entitled to extra compensation under the act of March 3, 1841, chap. 35, to be computed upon the fees, emoluments, or storage not actually received and accounted for by them, and to which fees, emoluments, or storage they are not legally entitled. *Opinion of April* 29, 1868, 12 Op. 386.

145. The diplomatic appropriation act of March 30, 1868, chap. 38, disallows the salary of a diplomatic or consular officer in all cases of absence where in any one year the officer shall already have enjoyed absence, with salary, equal to sixty days of time. *Opinion of May* 21, 1868, 12 Op. 410.

146. The compensation of vice-consuls and vice commercial agents does not stop during the absence of their principals. *Ibid.*

147. An act for the removal of the legal disabilities of a public officer is not retroactive, and does not entitle him to receive compensation for the period previous to the act during which he was unable to take the oath of office prescribed by the statute of July 2, 1862, chap. 128. *Opinion of Oct.* 9, 1868, 12 Op. 509.

148. An account of a United States attorney in California for professional services not falling within the scope of his official duties, rendered in a matter concerning the title to certain property in that State under the charge and supervision of the Treasury Department, held to be allowable out of the appropriate funds of that Department. *Opinion of April* 8, 1869, 13 Op. 15.

149. Under the fortieth section of the act of July 18, 1866, chap. 201, moneys received by a collector of customs from the owners of private bonded warehouses, by way of reimbursement to the Government for the compensation of the officers in charge of such warehouses stand upon the footing of storage in all respects, and are subject to the same disposition as other receipts falling strictly within the designation of storage. The collector may accordingly, retain from moneys so received in any one year, as part of his official compensation, a sum not exceeding $2,000, the excess over that amount being required to be paid into the Treasury. *Opinion of April* 27, 1869, 13 Op. 36.

150. Statutes relating to the compensation of naval officers and surveyors of customs examined, and the following result reached: (1) That the ninth and tenth sections of the act of May 7, 1822, chap. 107, fix the maximum of compensation to which they are entitled where it is derived from any or all of the sources comprehended by that act; (2) that the fifth section of the act of March 3, 1841, chap. 35, limits the amount which may be applied to their use where derived from rent and storage received or collected by them, but not from any other source; (3) that they become entitled to compensation out of moneys derived from the last-named source only in cases where the duty of receiving or collecting such money is devolved upon them, respectively, by law. *Ibid.*

151. Naval officers and surveyors are not entitled to any compensation from the rents and storage received and accounted for by the collectors of the several ports. *Ibid.*

152. The provisions of the twelfth section of the act of March 3, 1863, chap. 76, authorizing the allowance of compensation to attorneys employed to appear in behalf of revenue officers, where such compensation is certified to be reasonable and proper by the court in which the proceeding was had, and is approved by the Secretary of the Treasury, are, by the first section of the act of July 27, 1868, chap. 276, made applicable to suits or proceedings against any officer or agent of the Government for any act done under color of his office during the rebellion. *Opinion of April* 28, 1869, 13 Op. 42.

153. Section 8 of the act of July 12, 1870, chap. 251, placing a legislative construction upon the fifth section of the act of March 3, 1841, chap. 35, operates retrospectively, and gives to naval officers and surveyors a greater compensation for past services than the latter section, as expounded by the Supreme Court, gave them when the services were rendered. *Opinion of Aug.* 1, 1870, 13 Op. 297.

154. The act of 1870, however, does not authorize the reopening of accounts that have been finally adjusted; but where accounts of naval officers and surveyors for past services rendered since the date of the act of March 3, 1841, are still open, those officers should receive the credits allowed by the act of 1870, and they should receive the same credits in their accounts for future services. *Ibid.*

155. Where a person was appointed an assistant assessor of internal revenue in Texas and served as such during the years 1865 and 1866, but did not take the oath of office prescribed by the act of July 2, 1862, chap. 128: *Held* that he is entitled to compensation for the services so rendered under the provisions of section 11 of the act of July 15, 1870, chap. 292. *Opinion of Aug.* 5, 1870, 13 Op. 306.

156. Section 8 of the act of July 12, 1870, chap. 251, does not repeal the act of March 3, 1851, chap. 32, as regards the compensation of naval officers and surveyors of the ports therein mentioned. That section does not increase the fees of those officers; it merely permits them to retain the fees as their own up to a greater maximum than before. *Opinion of Aug.* 17, 1870, 13 Op. 312.

157. The compensation approved by the President for the deputy treasurer at the assay office in New York, which is the same in amount as that allowed under existing laws to the treasurer of the branch mint at San Francisco, is allowable under section 10 of the act of March 3, 1853, chap. 97. *Opinion of Oct.* 13, 1870, 13 Op. 335.

158. Where an assistant United States attorney was employed by the Secretary of War, before the passage of the act of June 22, 1870, chap. 150, to perform certain professional services in connection with the purchase of certain land under the direction of the Department of War: *Held*, first, that as the employment was prior to the date of the act, its provisions had no application to the case; second, that the services were not such as the United States attorney, or his assistant, was obliged to discharge, and that the Secretary of War was authorized to employ either as special counsel and allow a compensation therefor. Such peculiar service as the examination of a title to land is not within the spirit or, necessarily, the letter of section 17 of said act; and it is competent to the head of a Department, in his discretion, to employ a conveyancer or an attorney to examine titles, notwithstanding the provisions of that act. *Opinion of June* 19, 1871, 13 Op. 580.

159. But where, after the said act took effect, counsel were employed by the military authorities to appear in court in certain *habeas corpus* cases: *Held* that the Secretary of War had no authority to employ such counsel without the consent of the Attorney-General, and that a claim for their services can only be allowed on the approval of the latter. *Ibid.*

160. The proviso in section 4 of the act of July 28, 1866, chap. 293, declaring that "the additional compensation of 25 per centum, as now provided by law, shall be continued to officers as aforesaid [*i. e.*, deputy collectors] at the port of San Francisco," explained. And *held* that under that enactment the deputy collector of customs at San Francisco is absolutely entitled to such additional compensation, and the Secretary of the Treasury cannot, in his discretion, disallow the same. *Opinion of May* 20, 1873, 14 Op. 241.

161. Where an officer in the civil service of the Government, after having been suspended by the President under the tenure-of-office act of April 5, 1869, chap. 10, was afterwards restored to duty, and who, during the period of his suspension, had been employed in settling up his affairs with the Government: *Held* that he could under no circumstances whatever be allowed the salary of the office for the period of his suspension, the statute expressly declaring that no part of such salary shall belong to the suspended officer. *Opinion of May* 31, 1873, 14 Op. 247.

162. The provision of the act of March 3, 1873, chap. 226, increasing the pay of certain employés of the Senate and House of Representatives 15 per centum, does not apply to persons employed after the passage of that act; the increase of pay referred to is *pro hac vice* only, and not continuing. *Opinion of July* 9, 1873, 14 Op. 612.

163. Where accounts were presented to the Treasury Department for services rendered by a district attorney during the year 1873, in prosecutions for fines, penalties, and forfeitures for violation of the revenue laws: *Advised* that they may be paid under the act of March 3, 1873, chap. 244, if the charges therein are deemed just and reasonable by the head of that Department. *Opinion of April* 3, 1874, 14 Op. 384.

164. Where a diplomatic officer of a class named in the act of June 17, 1874, chap. 294, temporarily absented himself for a period of not over ten days: *Held* that the right to compensation, where the absence is not over ten days, is in no case affected by that act, and that such officer may, accordingly, be allowed compensation for the period of his temporary absence. *Opinion of March* 2, 1875, 14 Op. 534.

165. The Court of Commissioners of Alabama Claims has no authority to *allow* compensation to the marshal of the District of Columbia for his services in connection with that court. For any service of process under the act constituting said court which comes within the description of any of the acts for which by section 829 Rev. Stat. marshals are allowed fees (*e. g.*, service of a warrant, or summons, or subpœna, under order of the court), the marshal is entitled to the fee in such section given. Fees thus earned and received by the marshal form a part of the emoluments of his office, and should be included in his emolument return. *Opinion of Feb.* 1, 1876, 15 Op. 534.

166. In ascertaining the storage fund out of which the customs officer is entitled to retain the maximum allowed, under section 5 of the act of March 3, 1841, chap. 35 (section 2647 Rev. Stat.), *all* storage fees received are to be computed, including those which have accrued from storage of merchandise in buildings owned by the Government. *Opinion of June* 12, 1876, 15 Op. 117.

167. District attorneys are entitled, under section 825 Rev. Stat., to a commission upon the "tax" required to be paid by the purchasers of forfeited property sold in pursuance of section 3334 Rev. Stat. *Opinion of July* 1, 1876, 15 Op. 566.

168. Such tax, however, is not within sections 828 (clause 17) and 829 (clause 6) of the Revised Statutes, and therefore clerks of courts and marshals are not entitled to commissions thereon. *Ibid.*

169. The clerk of the Court of Commissioners of Alabama Claims, in his capacity as disbursing agent, paid to the marshal of the District of Columbia for his services a certain amount of money, under an order of that court requiring him to pay to the marshal, monthly, a salary of $3,200 per annum: *Held* (reaffirming opinion of February 1, 1876, 15 Op. 534) that the order of the court was no warrant for the payment as salary; *held, further*, that it was no warrant for the payment as an amount advanced to the marshal, to be by him accounted for at the Treasury. *Opinion of July* 6, 1876, 15 Op. 568.

170. An assistant United States attorney was appointed in 1874, at the request of the Postmaster-General, to aid in conducting a suit against a defaulting postmaster. By the terms of his appointment the assistant was to receive "a reasonable compensation to be determined by the Post-Office Department." He claims a fixed amount as compensation by virtue of an agreement made previous to the appointment: *Held* that whatever the previous agreement was it has nothing to do with the matter of compensation for services under the appointment, which latter leaves the amount to the future determination of the Post-Office Department—an arrangement wherewith any previous contract for a specific fee is inconsistent. *Opinion of Jan.* 24, 1877, 15 Op. 189.

171. In determining the allowances which a district attorney should receive under section 827 Rev. Stats. as compensation for appearing, by direction of the Secretary of the Treasury, or of the Solicitor of the Treasury, in suits against officers of the United States for acts done by them or for the recovery of money received by them and paid into the Treasury, the Secretary of the Treasury may, in his discretion, properly consider what compensation such attorney otherwise annually receives from the Government, and limit the amount to be received by him for the services mentioned, including what he thus otherwise receives, to a sum not exceeding $10,000 per annum. *Opinion of May* 18, 1877, 15 Op. 277.

172. The Secretary of the Treasury cannot, under section 2634 Rev. Stat., give to officers whose compensation is fixed by law a compensation which shall be regulated by his own discretion. *Opinion of June* 4, 1877, 15 Op. 286.

173. Under section 829 Rev. Stat. the marshal for the district of Kentucky, in a case where proceedings are stayed after levy of an execution and no moneys are collected thereon, is entitled to charge the half commissions allowed by the law of Kentucky to a sheriff in such a case. *Opinion of June* 30, 1877, 15 Op. 347.

174. Where the marshal who levied the execution has received his half commissions, his successor will be entitled to no more than half commissions for completing the collection and paying over. *Ibid.*

175. Collectors of customs whose compensation does not exceed $3,000 a year are entitled (under section 4672 Rev. Stat.), when acting as superintendents and disbursing agents for light-houses, to compensation for their services as such disbursing agents, the amount whereof is to be determined by the Secretary of the Treasury, but is not to exceed $400 in any fiscal year. *Opinion of Aug.* 2, 1877, 15 Op. 348.

176. A special deputy (without compensation as such), constituted by the naval officer at the port of New York, under section 2632 Rev. Stat., to perform the duties of the latter in cases of occasional and necessary absence or of sickness, may at the same time be appointed to a clerkship in the office of such naval officer, and be allowed, under section 2745 Rev. Stat., a compensation for his services *as clerk* greater in amount than that affixed by law to the permanent office of deputy naval officer at the same port, provided it do not exceed the rate usually paid for similar services. This case distinguished from the cases considered in the opinion of June 4, 1877 (15 Op. 286). *Opinion of Aug.* 9, 1877, 15 Op. 356.

177. The amount received by the customs officers on the northern frontier for each blank manifest or clearance sold under section 2648 Rev. Stat. is a fee intended for the use of the officer, and does not come within the provision of section 3617 Rev. Stat., requiring "the gross sums of all moneys received from whatever source, for the use of the United States," &c., to be paid into the Treasury. *Opinion of Sept.* 27, 1877, 15 Op. 654.

178. Upon consideration of the provisions of sections 31 and 35 of the act of June 8, 1872, chap. 335: *Held* that the compensation of two special agents employed by the Postmaster-General for the free-delivery service can be paid out of the appropriation for that service. *Opinion of Dec.* 17, 1877, 15 Op. 417.

179. In general, the official duty of a district attorney does not require him to attend to suits in State courts, although the United States may be directly interested therein; and where he appears in those courts (except in certain cases—see section 771 Rev. Stat.) his appearance there must be pursuant to the previous direction, or receive the subsequent approval, of the Attorney-General, to entitle him to compensation from the Government for such service. *Opinion of July* 19, 1878, 16 Op. 99.

180. The compensation of a district attorney for such service is in all cases regulated by section 299 Rev. Stat., with only this exception, that where he has appeared, by direction of the Secretary or Solicitor of the Treasury in a suit against a revenue officer, his compensation therefor is regulated by section 827 Rev. Stat. *Ibid.*

181. It is contemplated by section 299 that, where no fees are provided by law to which the compensation of a district attorney in respect to any part of his services can be assimilated, a fair and reasonable compensation for such part of his services shall be made. *Ibid.*

182. Compensation allowed a district attorney under section 299 should be included in the semi-annual return required from him by section 833 Rev. Stat. *Ibid.*

183. Section 7 of the act of February 22,

1875, chap. 95, in prohibiting "any allowance for mileage or travel not actually and necessarily performed under the provisions of existing law," does not modify the provisions of section 829 Rev. Stat., in so far as they fix the rate, determine the mode of computation, and limit the compensation of marshals for the service of process. It leaves the marshal entitled to the same compensation for travel for the service of any and every writ to which he would be entitled under those provisions in the absence of that prohibition, if travel has been actually and necessarily performed by him in serving the writ. *Opinion of Oct.* 10, 1878, 16 Op. 165.

184. Where a marshal travels with several writs in his hands, to be served at the same place, he actually and necessarily travels to serve each of them, within the meaning of section 7 of said act: *Held*, accordingly, that a marshal is entitled to full mileage on each writ served by him when several writs issued in behalf of the Government, to be served on different persons, are or might be served at the same time, only one travel being necessary to make the service on all such persons—where the travel is actually performed. Opinion of May 29, 1876 (15 Op. 108), overruled. *Ibid.*

III. Officers, &c., in the Military Service.

185. Generals Gaines and Scott being major-generals by brevet, and brevets being recognized in the act of July 6, 1812, chap. 137, which has been continued in practice since the peace, and having commands according to their brevet rank, are entitled to the pay of major-general. *Opinion of Dec.* 29, 1821, 1 Op. 525.

186. Whether General Macomb is entitled to the brevet pay of brigadier-general depends upon his having a command according to his brevet rank. But what a command according to brevet rank is the law does not decide; the same is left to be determined by the regulations of the Army. *Opinion of June* 5, 1822, 1 Op. 547.

187. The opinion of the Attorney-General of the 29th December, 1821, was founded on the act of the 16th of April, 1818, chap. 64, and the Army order of the 8th of May following, based thereon and giving construction to it. The repeal by the act of May 7, 1822, chap. 88, of the section of the act of 2d March, 1821, chap. 13, which sustains the Army order, removes one of the grounds upon which it was suggested that the officers named in that opinion were in command of divisions, and leaves the fact to be settled by the Department of War. *Opinion of Sept.* 21, 1822, 1 Op. 564.

188. If Generals Gaines and Scott are in command of divisions, according to the arrangement of troops on the peace establishment, they are, nevertheless, by force of the act of the 16th April, 1818, entitled to the pay and emoluments of their brevet rank. *Ibid.*

189. The services of General Harrison in the campaign of the Wabash, in 1811, were not included in the duties of the governor of the Territory, and he is entitled to pay therefor under the act of April 10, 1812, chap. 54. *Opinion of Jan.* 17, 1826, 2 Op. 22.

190. Where the acts of Congress designate the compensation of officers of staff by a reference to the pay and emoluments of any specified rank in the line of the Army, the line must be taken to refer to the infantry, unless otherwise expressed. *Opinion of July* 2, 1829, 2 Op. 220.

191. The act of April 16, 1818, chap. 64, allows pay to brevetted officers having commands according to their brevet rank; but the order of the Secretary of War provides that they shall have a command equal to double their ordinary or regimental command, which order conflicts with the act, and is, therefore, of doubtful validity. *Opinion of July* 18, 1829, 2 Op. 223.

192. Brevet pay must, nevertheless, be limited to those "who are on duty and have a command according to their brevet rank," according to the language of that act, and cannot legally be extended to those whose command is double that which their regimental rank authorizes, but which is at the same time not according to that to which their brevet rank entitles them. *Ibid.*

193. The militia of Missouri, Indiana, and Michigan, who were ordered out to repel Indian invasions by a competent State or Territorial authority, are entitled to be paid for their services out of the appropriation made by the act of June 15, 1832, chap. 130, provided the circumstances under which the call was made were, in the opinion of the President, sufficient to justify it. *Opinion of Oct.* 26, 1832, 2 Op. 536.

194. The amount of compensation in all cases of militia service rendered during the late

Indian hostilities on the frontiers is limited to the time during which actual service was rendered; and the Secretary of War has no power to allow more. *Opinion of Dec.* 21, 1832, 2 Op. 547.

195. The chief of the Corps of Engineers is not entitled to one dollar and twenty-five cents per day for Bureau duty, under the construction, long acquiesed in, given to the regulation of August 10, 1818, by the War Department. *Opinion of April* 18, 1833, 2 Op. 560.

196. The word "compensation," as used in the act of 25th of January, 1828, chap. 2, which declares that compensation shall not be paid to any person in arrears to the United States until, &c., is equivalent to the words "pay or salary," and does not include the "rations" nor "extra expenses," which are not pay proper. *Opinion of Jan.* 24, 1834, 2 Op. 593.

197. The commissions given under the act of March 2, 1833, chap. 61, to the district paymasters of the Army of the United States, employed in making payments to the militia ordered into the service of the United States during the preceding year, are to be calculated only upon the sums respectively paid by them in the performance of their duty. They are not to be calculated upon moneys received and paid over to other public officers also acting as paymasters and agents of the Government. *Opinion of March* 22, 1834, 2 Op. 621.

198. The pay of military officers may properly commence from the date of their acceptance, as they are liable to duty from that date. But neither in cases of new offices nor transfers from one corps to another can it commence until the appointee is subject to duty. *Opinion of April* 16, 1834, 2 Op. 638.

199. A brevet major, whilst in command, according to his brevet rank, of a fort, being detailed to sit as major on a court-martial, is entitled to his brevet pay for the period employed on the court, provided it shall be found that, according to military usage, he was at the same time in command of the fort. *Opinion of April* 18, 1834, 2 Op. 646.

200. The acts of Congress on the subject of brevet pay allow such pay only from the time when the brevet commission was actually conferred. *Opinion of Jan.* 5, 1835, 2 Op. 697.

201. The design of the proviso limiting the compensation of officers of the Army, contained in the act of 3d March, 1835, chap. 26, was to prohibit the payment of any percentage, additional pay, extra allowance, or extra compensation to them, not only on account of the disbursing of public moneys appropriated during the last session of Congress for any of the purposes specially enumerated, but also to prohibit any such allowance for any other duty or service whatsoever, unless authorized by law. *Opinion of March* 7, 1835, 2 Op. 702.

202. According to the regulations in force at the time, the duties performed by Captain Delafield were so far extra as to entitle him to the special compensation provided for by those regulations, not exceeding two and a half per cent. on all the moneys disbursed by him. *Opinion of April* 3, 1835, 2 Op. 705.

203. Sergeants of the Army employed as assistant clerks in the Bureaus of the War Department are entitled to the additional compensation of fifteen cents per day allowed by the act of March 2, 1819, chap. 45. *Opinion of April* 3, 1835, 2 Op. 706.

204. A lieutenant-colonel is entitled to receive a reasonable compensation for the services performed and the expenses incurred by him for superintending the Springfield Armory whilst he was in command of the Watervliet Arsenal; but not as superintendent of said armory, whilst there was a regular superintendent in office. *Opinion of March* 21, 1836, 3 Op. 50.

205. To entitle a brevet brigadier-general to pay according to his brevet rank he must be in command of a brigade regularly consisting of two regiments. *Opinion of April* 13, 1836, 3 Op. 83.

206. Officers of Ordnance Department are excluded from the benefits of their brevet rank by the act of 16th April, 1818, chap. 64. *Opinion of April* 13, 1836, 3 Op. 83.

207. A captain stricken from the rolls of the Army, and afterwards reinstated, by and with the advice of the Senate, can claim pay, after reinstatement, only from the date of his acceptance of the new commission. *Opinion of May* 3, 1836, 3 Op. 105.

208. Captains of volunteers or militia embraced in the act of the 19th March, 1836, chap. 44, who performed any duty, or were charged with any responsibility, with respect to the clothing, arms, or accouterments, or with respect to either of these articles, belonging to their companies, are entitled to the ad-

ditional compensation of ten dollars per month allowed to captains of the Army for their duties in respect to clothing, &c., by the act of 2d March, 1827, chap. 42. *Opinion of June* 27, 1836, 3 Op. 136.

209. There is no provision of law which authorizes the employment of persons for clerks to paymasters other than non-commissioned officers; yet the Department, in the exercise of its general powers, may allow a private citizen to be employed when no capable non-commissioned officer can be obtained. *Opinion of June* 7, 1837, 3 Op. 242.

210. The Department may take the highest pay allowed by the laws now in force to any non-commissioned officer of the corps to which the person employed as paymaster's clerk belongs as the standard of compensation, and may allow him double the same. *Ibid.*

211. The Acting Quartermaster-General is entitled to receive the pay and emoluments of Quartermaster-General during the period of his service in that capacity, where the office is really or effectually vacant. *Opinion of July* 11, 1837, 3 Op. 261.

212. The proviso of the fifth section of the act of 4th July, 1836, chap. 356, to authorize the appointment of additional paymasters, and for other purposes, does not seem to defeat the present claim. *Ibid.*

213. An officer exercising a command in a corps of militia or volunteers in the actual service of the United States higher in grade than his rank in the Army is equitably entitled to the pay and emoluments of the grade in which he serves. *Opinion of April* 6, 1838, 3 Op. 323.

214. A captain, entitled to keep three horses only, can only draw forage in kind, or claim an equivalent in money, for that number; and if he draw for horses belonging to the United States, it must be deducted from that number. *Opinion of July* 11, 1838, 3 Op. 340.

215. An assistant surgeon appointed Surgeon-General *ad interim*, and discharging at the same time the duties of both offices, is entitled to the pay of both, unless the functions of the former were merged in the latter, or suspended by the performance of such other duties as to make it legally improper or actually impossible for him to execute the functions of assistant. *Opinion of Aug.* 16, 1838, 3 Op. 363.

216. The compensation of teamsters, &c., in the Florida service was not provided for in the act of March 2, 1819, chap. 45, providing pay for fatigue duty in the Regular Army, but has been provided for specially by acts of June 12, 1838, chap. 97, and March 3, 1839, chap. 93, and may be made to the volunteers selected for that service, with the approbation of the commanding general. *Opinion of June* 26, 1840, 3 Op. 550.

217. Company officers only are entitled to the forty cents a day provided by the second section of the act of March 19, 1836, chap. 44. *Opinion of July* 11, 1840, 3 Op. 566.

218. A lieutenant having written a letter to the Secretary of War which, though not intended as such, was considered a resignation by that Department, and the lieutenant was accordingly dropped from the rolls, but afterwards restored by the President to his station and rank, is entitled to be paid as lieutenant during the time he was kept out of service. *Opinion of July* 12, 1841, 3 Op. 641.

219. If the accounting officers are satisfied that a paymaster had authority to employ clerks to assist in paying the militia and volunteers, they may allow him a reasonable compensation for them, irrespective of the act of July 5, 1838, chap. 162. *Opinion of Oct.* 19, 1842, 4 Op. 94.

220. The act of 1838 relates to clerks of paymasters paying the Regular Army, and not to the paying of militia and volunteers. *Ibid.*

221. Under no circumstances can a subaltern claim the additional ration given by the act of March 2, 1827, chap. 42, whether as commanding officer or otherwise, whilst receiving compensation for the performance of staff duties. *Opinion of Jan.* 23, 1844, 4 Op. 305.

222. Paymasters, surgeons, and assistant surgeons are entitled, under the act of March 3, 1845, chap. 65, to forage for one horse each only, as they are not general field officers nor officers of dragoons, but are within the denomination of "other officers entitled to forage" specified in the said act. *Opinion of July* 31, 1845, 4 Op. 415.

223. Major Ripley is entitled to payment of his account for extra services in superintending the Springfield Armory, as such superintendence was in addition to his appropriate duties, and as an appropriation was made by Congress to satisfy it, which no other person could receive. *Opinion of Aug.* 10, 1846, 4 Op. 522.

224. The act of May 19, 1846, chap. 22, for raising a regiment of mounted riflemen, created the regiment thereby created as a body of mounted men, and gave them the pay and emoluments of dragoons. *Opinion of Sept. 3*, 1846, 4 Op. 535.

225. Those non-commissioned officers, musicians, and privates only are entitled to the three months' extra pay guaranteed in the twenty-ninth section of the act of July 5, 1838, chap. 162, who, having been enlisted for the term of five years in the Regular Army, shall have re-enlisted in their companies or regiments within two months before, or one month after, the expiration of their respective terms of service. *Opinion of Jan.* 11, 1847, 4 Op. 538.

226. The extra pay was offered as a reward, not for re-enlisting for any period of time less than that of their first contract, but to induce able-bodied, disciplined, and experienced men to continue in the Army for another full term of five years. *Ibid.*

227. Wherefore, those non-commissioned officers, musicians, and privates of the Army, who shall re-enlist—not for the full term of five years, but during the war with Mexico—will not be entitled to such extra pay. *Ibid.*

228. Major Craig is entitled to extra compensation for his services as superintendent of the armory at Harper's Ferry, Congress having made an appropriation therefor, which no other person is entitled to receive. *Opinion of Nov.* 27, 1848, 5 Op. 61.

229. The tenth section of the act March 3, 1847, chap. 61, regulating the pay of lieutenants holding the appointment of adjutant or regimental quartermaster, &c, is to be regarded as prospective in its operation. *Opinion of Feb.* 16, 1849, 5 Op. 72.

230. The increased compensation allowed by the act of 16th September, 1850, chap. 54, to certain professors and teachers at the Military Academy, commenced with the fiscal year ending 30th June, 1851. *Opinion of April* 16, 1851, 5 Op. 317.

231. The additional compensation of paymasters employed in the payment of volunteers during the late war with Mexico, authorized by the act of August 12, 1848, chap. 168, may be continued up to the time of the payment of the volunteers who returned home unpaid at the end of the war. *Opinion of April* 22, 1851, 5 Op. 362.

232. It is the settled policy of the Government to encourage re-enlistments; and where, under the act of 3d March, 1847, chap. 61, soldiers have received certificates of merit which entitle them to additional pay of two dollars per month, such pay does not cease at the expiration of the term during which they received the certificates, but continues through successive enlistments. *Opinion of Oct.* 10, 1851, 5 Op. 400.

233. Brevet Major-General Smith, assigned to the command of the Eighth Military Department, was temporarily absent therefrom under orders from the general-in-chief, for the purpose of consultation upon matters connected with his command, during which time Brevet Brigadier-General Harney was ordered to the temporary command of the same department: *Held* that Brevet Major-General Smith and Brevet Brigadier-General Harney were each entitled, for the time, to the pay and emoluments according to their respective brevet ranks, each being in command and on duty in such rank. *Opinion of Nov.* 7, 1853, 6 Op. 211.

234. The provision of the act of August 4, 1854, chap. 247, increasing the pay of the rank and file of the Army, takes effect immediately. *Opinion of Aug.* 19, 1854, 6 Op. 665.

235. General Scott having been nominated, confirmed, and appointed Lieutenant-General by brevet under authority conferred by the resolution of Congress approved February 15, 1855, the question arose whether there was then in force any law fixing the pay and allowances of the grade of Lieutenant-General; upon consideration of which question the Attorney-General reached the following conclusions: 1st. That the provisions of the fifth section of the act of May 28, 1798, chap. 47, have been repealed, in so far as regards the office which it created, by subsequent statutes, and especially, if by no other effectually and finally, yet certainly by that of March 2, 1821, chap. 13. 2d. It does not clearly appear that the provisions of that section, as to the pay of the grade of Lieutenant-General, had been repealed, either expressly or tacitly, by any subsequent act, and the same is probably to be regarded as having remained in abeyance, capable of renewed legal efficacy, if that rank should at any time be re-established, without additional legislation as to its pay and emolu-

ments. 3d. The enactment in the joint resolution that the "grade" of Lieutenant-General be "revived" does not have the consequential effect in law to revive the statute as such, provided the same had previously been repealed. 4th. But, when a statute revives a statute grade or office it is to be intended, if nothing to the contrary appear, that the statute provision as to pay and emoluments previously annexed to the grade or office is by legal consequence revived, whether that provision of the statute had or not been repealed. 5th. Hence, the joint resolution must receive one or the other of these alternative constructions: Either, first, it intends that the pre-existing provision of statute, which fixed the pay of the grade of Lieutenant-General, had never been repealed, that the law on that subject was dormant, awaiting the existence of an office and a person to which and to whom it should become applicable, the office being supplied by the resolution, and the person by his appointment to the office; or, secondly, it intends, assuming that the statute office of Lieutenant-General, with its pay and emoluments, once existed, but had been repealed or had fallen into desuetude, to revive that statute office, for this occasion, and in so doing to resuscitate the statute pay and emoluments of the office; and therefore there is now in force a law in the fifth section of the act of May 28, 1798, fixing the pay of the grade of Lieutenant-General. *Opinion of Aug.* 24, 1855, 7 Op. 400.

236. The officers of the Army constituting the staff of General Scott while in command of the Army do not become entitled to increase of rank and pay or emoluments in virtue of the law authorizing the revival of the grade of Lieutenant-General and its bestowment by brevet on a major-general. *Opinion of June* 2, 1856, 7 Op. 709.

237. An officer of the Army or Navy who is dismissed, and afterwards restored to the same rank which he would have held if not dismissed, cannot be paid for the intermediate time, unless by act of Congress. *Opinion of April* 21, 1858, 9 Op. 137.

238. An assistant quartermaster, with the rank of captain, appointed under section 10 of the act of February 11, 1847, chap. 8, is entitled to the compensation previously provided for that grade, and not to that of regimental quartermasters appointed under section 4 of the same act. *Opinion of March* 16, 1859, 9 Op. 285.

239. The *proviso* to the fifteenth section of the act of July 17, 1862, chap. 201, was not intended to fix the compensation of all "persons of African descent" in the military service of the United States, but only of those who might be employed for the humbler kinds of service mentioned in the act. *Opinion of April* 23, 1864, 11 Op. 37.

240. The same pay, bounty, and clothing are allowed by law to persons of color who were free on the 19th of April, 1861, and were enlisted and mustered into the military service of the United States between December, 1862, and the 16th of June, 1864, as are, by the law existing at the time of the enlistment of such persons, authorized and provided for and allowed to soldiers in our volunteer forces of like arms of the service. *Opinion of July* 1[illegible] 1864, 11 Op. 53.

241. "Under cooks of African descent," enlisted under the authority of the act of March 3, 1863, chap. 78, section 10, are not entitled to receive any other and greater compensation than that provided by that statute. *Opinion of April* 12, 1865, 11 Op. 193.

242. Commissioned officers of volunteers, below the rank of brigadier-general, mustered out because their services are no longer required, are entitled to receive "three months' pay proper," under the fourth section of the act of March 3, 1865, chap. 81. *Opinion of May* 6, 1865, 11 Op. 224.

243. The clerks and employés in the office of the Depot Commissary of Subsistence at Washington are not entitled to the additional compensation provided by the joint resolution of February 28, 1867. *Opinion of Feb.* 9, 1869, 12 Op. 553.

244. Where a volunteer officer in the military service of the United States was sentenced by a court-martial to suspension of rank and pay for a certain period, before the expiration of which he was mustered out of service and discharged: *Held* that the sentence did not work a forfeiture of the three months' extra pay provided by the fourth section of the act of March 3, 1865, chap. 81, but merely deprived the officer, during his continuance in service and while it remained in force, of his regular current pay. *Opinion of April* 10, 1869, 13 Op. 16.

245. To entitle an officer to the extra pay provided in the enactment referred to, it is not necessary that he shall have received an "honorable" discharge; the character of the discharge not being an essential element in the claim. *Ibid.*

246. An officer in the military service, who, having been arrested for an offense, tried by a court-martial, and convicted, is sentenced to a punishment which necessarily severs his connection with the service, does not forfeit his pay for the period intervening between the date of the arrest and the date when the sentence takes effect, unless forfeiture of pay for such period is expressly made a part of the sentence. *Opinion of June* 16, 1869, 13 Op. 104.

247. The monthly pay of officers of the Army is prescribed by statute, and so long as a person is an officer of the Army he is entitled to receive the pay belonging to the office, unless he has forfeited it under some provision of law, whether he has actually performed military service or not. *Ibid.*

248. A non-commissioned officer of Illinois volunteers, in the service of the United States, was appointed by the colonel of his regiment to the command of a company on the 6th of March, 1863, to fill a vacancy caused by resignation, and entered upon the duties of his new position; on the 3d of April, 1863, he was commissioned by the governor of Illinois as captain of said company, to take rank from the date first mentioned; but, on account of military operations and other causes beyond his control, he did not receive the commission, nor was he mustered as captain, until the 2d of June, 1863; claim being made by him for compensation as captain from March 6, 1863, to June 2, 1863: *Held* that, under the resolutions of July 26, 1866, and July 11, 1870, he is entitled to a captain's pay from the 3d of April to the 2d of June, but that the claim for the other part of the period covered thereby is not well founded. *Opinion of April* 29, 1871, 13 Op. 414.

249. Where a soldier was tried by a court-martial for theft and desertion, and, having been convicted of both charges, was sentenced by the court; but the proceedings, findings, and sentence were afterward disapproved by the reviewing officer (the commanding-general of the military department), and the prisoner ordered to be released from confinement and restored to duty: *Held* that the action of the reviewing officer was in effect an acquittal by the court; that the accused is, in contemplation of law, innocent of the charges mentioned; and that there is no authority for withholding his pay on account of the alleged desertion. *Opinion of June* 21, 1871, 13 Op. 459.

250. Under the act of August 3, 1861, chap. 42, Surgeon-General C. A. Finley was, upon his own application, by an order from the War Department, issued by direction of the President on the 23d of April, 1862, placed upon the retired-list of the Army, to date from April 14, 1862; and, by the same act, any officer retired thereunder was to be allowed "the pay proper of the highest rank held by him at the time of his retirement, whether by staff or regimental commission, and four rations per day," without any other pay, emoluments, or allowances. *Opinion of Aug.* 2, 1872, 14 Op. 77.

251. In enacting that provision Congress acted on the supposition that the compensation of all officers consisted of what is termed "pay proper" and certain emoluments besides, such as commutation for service rations, &c.; and the limitation of "four rations per day" was designed to operate solely in diminution of those emoluments. *Ibid.*

252. But the compensation of the Surgeon-General consisted of a stated annual salary, without any emoluments of the kind referred to, and the rank held by him, not being assimilated by law to any particular grade in the Army, was indicated only by the title of his office. *Ibid.*

253. *Held, therefore,* that Surgeon-General Finley became entitled, on his retirement, to the annual salary which he previously received, that being the pay proper of the highest rank held by him, but not to four rations per day in addition thereto, as the allowance of these would be inconsistent with the purpose of the limitation mentioned. *Ibid.*

254. The compensation of a paymaster in the Army runs from the date of the acceptance of his appointment, not from the date of the approval of his bond. *Opinion of June* 8, 1878, 16 Op. 38.

255. Section 3 of the act of June 23, 1879, chap. 35, which provides that "the examiner of State claims in the office of the Secretary of War shall have, while on such duty, the pay, emoluments, and allowances of mounted officers one grade higher than that held by him

in his regiment or corps," is prospective in it operation, and has no retrospective effect. It entitles the officer described to the pay, &c., therein provided while thereafter performing such duty; but does not entitle him thereto for duty performed prior to the date of the act. *Opinion of April* 23, 1879, 16 Op. 378.

256. In April, 1863, during a recess of the Senate, B. was temporarily appointed a major and aid-de-camp in the Army. His appointment expired by limitation on July 4, 1864, the end of the next session of the Senate following the appointment; but he was not *officially notified* of that fact until January 7, 1865. Under an order of the Secretary of War authorizing pay until official notification, he drew pay as major, &c., until December 31, 1864. He now applies for pay from January 1 to January 7, 1865, inclusive. *Held* (1) that B.'s commission expired by operation of law on July 4, 1864, of which he was bound to take notice, and that thereafter he became a private citizen; (2) that the services subsequently rendered by him were merely voluntary, and did not create a legal right to pay; (3) that unless his right to pay has since been recognized by legislation, he is now a debtor to the United States for the money which he subsequently received. *Opinion of Sept.* 29, 1880, 16 Op. 567.

IV. Officers, &c., in the Naval Service.

257. The act of 18th April, 1814, chap. 84, does not limit the right of the President to increase the pay of the officers and men belonging to the Navy to the close of the war with Great Britain. *Opinion of Aug.* 16, 1816, 1 Op. 192.

258. The pay of a purser stops with the acceptance of his resignation, subject to the settlement of his accounts; the condition of the acceptance only keeping the office alive for the purposes of a settlement, and not for accruing compensation. *Opinion of April* 3, 1820, 1 Op. 346.

259. Under the act of April 21, 1806, chap. 35, a suspended naval officer can receive only half-pay. *Opinion of Sept.* 21, 1821, 5 Op. 739.

260. The number of guns at which a ship of war is rated is the standard for the regulation of the pay of her officers, under the acts of Congress. The number of guns a ship may actually mount is variable, and increases or diminishes with the particular service in which she may be employed. *Opinion of April* 10, 1823, 1 Op. 606.

261. The act of 25th February, 1799, chap. 10, does not contemplate the case of a master-commandant commanding a vessel of twenty guns, such being required to be under the command of captains. *Ibid.*

262. By the act of 21st April, 1806, chap. 35, touching the pay of certain officers retained in service, it is provided that they shall receive no more than half of their monthly pay when they are not under orders for actual service. *Opinion of Nov.* 28, 1825, 2 Op. 18.

263. A midshipman, nominated and confirmed by the Senate to take rank next after a lieutenant who holds a commission dated January, 1825, cannot draw the pay of a lieutenant until he receives his lieutenant's commission. *Opinion of May* 17, 1826, 2 Op. 27.

264. In order to entitle a captain to the annual pay of $4,000 per annum given by the act of 3d March, 1835, chap. 27, he must be in actual command of a squadron on a foreign station. *Opinion of April* 13, 1836, 3 Op. 81.

265. Promoted officers of the Navy, whose commissions fix dates of rank anterior to the dates of the commissions, are entitled to the increased pay from the date to which their appointments were carried back, provided they were intermediately in the performance of duties compatible with the grade to which they were elevated by their promotions. *Opinion of June* 18, 1836, 3 Op. 124.

266. The date of the written acknowledgment of the receipt of the order, expressing a readiness to obey it, where such written acknowledgment is transmitted by the surgeon, is the day from which the increased pay under the act of March 3, 1835, chap. 27, is to commence. *Opinion of April* 10, 1837, 3 Op. 198.

267. The assistant surgeon is entitled, under the acts of May 24, 1828, chap. 121, and March 3, 1835, chap. 27, to the pay of a surgeon whenever he is called to discharge the peculiar duties of a surgeon; but those duties must be such as can only be performed by the latter when present. *Opinion of March* 10, 1838, 3 Op. 308.

268. An officer who, in point of fact, temporarily performs the duties belonging to an office of higher grade, is entitled to the compensation allowed to such higher grade, even though his appointment may not have conformed in all re-

spects to the requirements of the regulations. *Opinion of July* 10, 1838, 3 Op. 337.

269. The legal appointment of a passed midshipman, under sentence of suspension and on half-pay, to the office of lieutenant in the Navy is an implicit pardon of the sentence, and he is entitled to his pay as lieutenant from the date of his commission. *Opinion of March* 18, 1842, 4 Op. 8.

270. The construction put upon the act of March 3, 1835, chap. 27, allowing 10 cents a mile to naval officers who may be required to travel upon the public service, confining such allowance to traveling in this country, regarded as *res judicata;* yet it is an interpolation not exactly warranted by the letter of the statute. *Opinion of Oct.* 19, 1842, 4 Op. 95.

271. The rendering of "may" for "shall," and the "10 cents" per mile treated as the maximum only, &c., recommended. *Ibid.*

272. Public officers are entitled to the pay and emoluments appertaining to their offices only from the time they enter upon the performance of their duties. The performance of duties, or the condition requisite to the legal ability to perform them, is the equity upon which salaries are predicated. *Opinion of Nov.* 29, 1842, 4 Op. 123.

273. A surgeon removed by the Executive, and subsequently restored to the rank he would have had by virtue of his commission, is not entitled to pay for the time he was out of service, but only from the time of his restoration, as if he had always been in it. *Ibid.*

274. A captain of the Navy, appointed as chief of the Bureau of Construction, can only receive the salary fixed by the act of August 31, 1842, chap. 286, and not the pay of a captain on duty, under the act of March 3, 1835, chap 27. *Opinion of May* 27, 1843, 4 Op. 181.

275. The service of pursers must be continuous under the same commission to entitle them to the progressive rise in pay and rations prescribed by the act of August 26, 1842, chap. 206. *Opinion of Aug.* 7, 1843, 4 Op. 215.

276. Lieutenant Wilkes, who commanded the exploring expedition, does not come within the provisions of the appropriation act of March 3, 1843, chap. 100, and is not entitled to such a rate of extra pay as will make his annual compensation equal to that of the Superintendent of the Coast Survey. *Opinion of Aug.* 21, 1843, 4 Op. 235.

277. The act only authorized the accounting officers to allow and credit with extra pay those officers who were employed in scientific duties in the late surveying and exploring expedition to the Pacific Ocean and South Seas. *Ibid.*

278. The only extra compensation justly claimable by him is such as was allowed to officers of the Navy of equal grade with those employed in the Coast Survey. *Ibid.*

279. A dismissed midshipman, restored to service from the date of dismission, is not entitled to pay whilst out of the service, and not legally competent to perform duty by reason of permanent suspension. *Opinion of April* 15, 1844, 4 Op. 318.

280. The effect of a sentence of a court-martial suspending for three years, upon half-pay, a lieutenant of the Marine Corps, and ordering a reprimand by the Secretary of the Navy, is to suspend half the officer's pay from the date of the confirmation of the sentence forward during the term of three years. Until the confirmation he is entitled to receive full pay, as before trial. The authority of a naval court-martial to affect by its sentence the pay of any officer subject to its jurisdiction is conferred by the act of April 23, 1800, chap. 33. *Opinion of April* 29, 1844, 4 Op. 323.

281. The provision that officers or persons in public employ whose salaries are fixed by law cannot receive any additional allowance, except for traveling, for the performance of duties at a distance from their stations or domiciles applies to the officers of the Navy as well as to other public officers. *Opinion of Oct.* 18, 1844, 4 Op. 342.

282. It is doubtful if a case can be presented in which an officer whose salary is fixed by law can be entitled to an extra compensation for the discharge of a public service. *Ibid.*

283. An officer in the Navy receiving an antedated commission is not entitled to pay from such antedate. *Opinion of Nov.* 8, 1844, 4 Op. 348.

284. The purser attached to the war steamer Missouri is entitled to the same rate of compensation as pursers of frigates of the same rate. *Opinion of May* 30, 1845, 4 Op. 387.

285. War steamers of the tonnage, spars, rigging, and armament of frigates, and rated as such by the Department, may be regarded as frigates for the purpose of determining the

compensation to which the pursers thereof are entitled. *Ibid.*

286. If, however, it be found that this construction of the law produces any embarrassment in the outfit or allowances of steam-vessels, it may be obviated by a regulation arranging all the vessels of war using steam power into two classes. *Ibid.*

287. A surgeon in the Navy, who was dismissed from the service by the President in 1829, and renominated and confirmed, with the condition that such appointment should take effect from the date of the ineffectual confirmation; and who was again, in 1842, renominated to the same office, to take rank from the date of his original commission, is not entitled to back pay for the time intervening between his dismission and his restoration. *Opinion of July* 14, 1847, 4 Op. 603.

288. An antedated commission, when issued for the purpose of restoring an officer out of service to the rank which he would have held had he remained in it, does not carry with it the right to pay for services not only unperformed, but which he was incompetent to perform. *Ibid.*

289. A professor of mathematics in the Navy who may have been required to perform certain duties at the depot of charts and nautical instruments, and who at the time was superintendent of meteorological observations, by appointment of the Secretary of War, at a salary of $2,000, is not entitled at the same time to the salary of a professor of mathematics under the act of 3d March, 1835, chap. 27. The salary provided by that act is due only to professors when attached to vessels for sea service, or in a yard. *Opinion of Sept.* 2, 1850, 5 Op. 250.

290. But he is entitled to a reasonable compensation over and above his salary in the War Department for services performed in the depot of charts and nautical instruments. *Ibid.*

291. Lieutenants commanding naval steamships, built for the transportation of mails, under act of March 3, 1847, chap. 62, are in the service of the United States, and entitled to a salary of $1,800 per annum as lieutenants commanding in the Navy. *Opinion of Oct.* 25, 1851, 5 Op. 404.

292. By the remedial act of March 3, 1843, chap. 100, Lieutenant Wilkes, as superintendent of the exploring expedition to the Pacific Ocean and South Seas, is entitled to an extra compensation, equal to the pay allowed the Superintendent of the Coast Survey, for the period from March 22, 1838, to June 22, 1842. *Opinion of Aug.* 4, 1852, 5 Op. 591.

293. By successive acts of Congress, engineers and certain other officers of the Navy are to be examined for promotion, and if one of them be absent on duty at the time of the examination of his class, he shall, when examined and passed, take rank with the rest as if examined at the same time: *Held* that retroactive pay does not as of course follow the ascription of retroactive rank. *Opinion of July* 1 1853, 6 Op. 68.

294. The salary of the chief of the Bureau of Construction in the Navy Department, as such, is $3,000, though $3,500 is allowable to a captain of the Navy when he holds the office, the latter sum being provided in this case only as a limitation of his pay in the Navy. *Opinion of Oct.* 18, 1853, 6 Op. 169.

295. The time when the increased pay allowed by act of Congress to Lieutenant Gilliss as superintendent of the astronomical expedition to Chili shall cease, not being definitely prescribed by act of Congress, depends on the discretion of the Secretary of the Navy. *Opinion of Nov.* 19, 1853, 6 Op. 223.

296. An officer of the Navy becoming disabled from service, but not in the line of his duty, was permitted to retain his commission as an officer not under orders for actual service and received as such half-pay during twenty-seven years of total disability: *Held* that the sum thus allowed is the utmost which could be lawfully paid to the party, and that his administrator has no right to demand arrears of full pay in the case. *Opinion of March* 1 1854, 6 Op. 372.

297. Construction of the act of February 2 1855, chap. 127, in respect of the pay of officers of the Navy promoted into vacancies occasioned by the retirement of their senior officers under that act. *Opinion of Feb.* 14, 1856, 7 Op. 64

298. The duty-pay of naval surgeons under the act of June 1, 1860, chap. 67, begins when they enter on duty. *Opinion of Aug.* 13, 186 10 Op. 97.

299. The act of August 3, 1848, chap. 12 fixing the time from which the pay of naval surgeons on the graduated scale should begin is repealed by the act of June 1, 1860, chap

67, and in graduating the pay of a surgeon in the Navy the time is to be computed from the date of his commission. *Opinion of Aug.* 19, 1861, 10 Op. 101.

300. A midshipman appointed acting master under the act of July 24, 1861, chap. 13, is entitled to the pay of that grade. *Opinion of Sept.* 4, 1861, 10 Op. 111.

301. A paymaster in the Navy, retired under the act of December 21, 1861, chap. 1, and subsequently employed in active sea-service, is entitled to the proper "sea-pay" of his grade during the time of such employment. *Opinion of June* 18, 1862, 10 Op. 286.

302. The annual pay of a chaplain in the Navy is that of a lieutenant. *Opinion of Sept.* 4, 1862, 10 Op. 332.

303. A commander on the retired list in active service is entitled to the pay of his rank on the active list during that service. *Ibid.*

304. Officers on the retired list of the Navy prior to the act of August 3, 1861, chap. 42, who have received promotion on that list, are entitled to the pay of their new grade under the act of July 16, 1862, chap. 183, notwithstanding the prohibition in the fourth section of the act of January 16, 1857, chap. 12. *Opinion of Sept.* 5, 1862, 10 Op. 335.

305. A rear-admiral appointed to the office of chief of the Bureau of Yards and Docks, under the act of July 5, 1862, chap. 134, is not bound to accept the salary provided by that act, but may demand the pay allowed to a rear-admiral performing shore-duty by the act of July 16, 1862, chap. 183. *Opinion of Nov.* 17, 1862, 10 Op. 377.

306. The pay of the Vice-Admiral of the Navy while acting as superintendent of the naval school is at the rate allowed him for services at sea by the act of December 21, 1864, chap. 6. *Opinion of Nov.* 5, 1866, 12 Op. 81.

307. The act of June 1, 1860, chap. 67, to regulate the pay of the Navy, does not repeal the act of March 3, 1853, chap. 102, providing specially for the pay of a purser doing duty at the naval station of California. *Opinion of June* 15, 1868, 12 Op. 417.

308. After the passage of the act of June 1, 1860, chap. 67, a purser in the Navy, on duty in a *receiving-ship* at the naval station in California, could only receive the compensation authorized by that act. *Opinion of Nov.* 3, 1869, 13 Op. 170.

309. Under the laws previously in force, by which the pay of a purser on duty at the *naval station* or *navy-yard* at California must be determined, but one purser could lawfully be attached to that station on general or special duty, or do duty at that navy-yard, so as to be entitled to the pay fixed by those laws for that service, unless he were a purser of the Navy appointed inspector of provisions, clothing, and small-stores at that yard; and a purser doing duty in a receiving-ship stationed at or near a navy-yard or station is not to be regarded as a person on duty at or attached to such navy-yard or station. Review of the various statutes relating to the subject. *Ibid.*

310. The provision of the seventh section of the act of July 15, 1870, chap. 295, declaring that thereafter "the increased pay of a promoted officer [of the Navy] shall commence from the date he is to take rank, as stated in his commission," applied to such advancement or promotion in rank, and such only, as entitled the officer advanced or promoted to an increase of pay over what he got at the time his advancement or promotion actually transpired; the words "increased pay" in that provision being used relatively to the pay he *then* received. *Opinion of March* 18, 1875, 14 Op. 547.

311. Hence, where B., a paymaster in the Navy, was on the 17th of February, 1871, advanced fifteen numbers in his own grade, under the act of January 24, 1865, chap. 19, and received a new commission, by which he took rank as a paymaster from October 20, 1864, the commission held by him at the time of his advancement giving him rank as paymaster only from May 4, 1866, between which date and October 20, 1864, he had served and been paid as an assistant paymaster: *Held* that the case did not come within the above-mentioned provision, the advancement of B. not involving any increase of pay over what was received by him at the time it happened; and that, accordingly, a claim made by him under that provision for the difference between the pay of an assistant paymaster and the pay of a paymaster for the period between October 20, 1864, and May 4, 1866, is inadmissible. *Ibid.*

312. B., a retired naval officer, was dismissed

from the Navy, by order of the Executive, on the 30th of December, 1865. In May, 1876, upon his application for trial by court-martial, made under section 12 of the act of March 3, 1865, chap. 79, a court was awarded, which, in June, 1876, pronounced him innocent of every charge and specification, and, the dismissal being thereby annulled, he was ordered (June 5, 1876) to be restored to the retired list. Between the date of his dismissal and the date of his restoration he had not demanded in writing from the Secretary of the Navy as often as once in six months a trial; but pay is claimed by him for this period: *Held* that the right of the claimant to pay is governed by section 2 of the act of June 22, 1874, chap. 392, under the provisions of which he is not entitled to more than "pay as on leave for six months" from date of dismissal. *Opinion of July* 21, 1876, 15 Op. 569.

313. It was competent to Congress to modify, in the matter of pay, the effect of a restoration under the act of 1865. *Ibid.*

314. Officers and men in the naval service do not incur any forfeiture or loss of pay by confinement or suspension from duty under sentence of a court-martial, unless the forfeiture or loss be imposed by the sentence. *Opinion of Nov.* 9, 1876, 15 Op. 175.

315. In September, 1871, R., a paymaster in the Navy, was retired on furlough-pay, under section 23 of the act of August 3, 1861, chap. 42, and was thereupon allowed, under section 5 of the act of July 15, 1870, chap. 295, one-half of the highest pay of his grade. In May, 1876, he was transferred (under section 1594 Rev. Stat.) from the furlough to the retired-pay list. By section 1593 Rev. Stat. officers retired on furlough-pay are entitled to only one-half of leave-of-absence pay, and by section 1588 Rev. Stat. general provision is made fixing the pay of retired officers who do not fall under special provisions in that and other sections: *Held* that after the Revised Statutes took effect R. was entitled to receive only the pay provided by section 1593, and remained so entitled until the date of his transfer, when he became entitled to receive the pay provided by section 1588. *Opinion of June* 18, 1877, 15 Op. 317.

316. Sections 1588, 1590, and 1593 Rev. Stat., which contain provisions both of a general and special character prescribing the compensation of retired naval officers, and within their scope all such officers, wl the line or staff, superseded all prov force at the adoption of the Revised by which that compensation was pr regulated, and those sections therea nished the only law upon the subject.

317. The retirement of R., and allo him of compensation under the act of 1870, prior to the adoption of the Revi utes, did not give rise to a right in h "accruing or accrued," which is prot the saving provision of section 5597 R *Ibid.*

318. Where a naval officer is tra under section 1594 Rev. Stat., from lough list to the retired-pay list, the c his retirement determine the rate o which he is entitled under section 1 Stat. An officer retired on furlough- causes not incident to the service ca the action of the Executive, be trans the 75 per centum retired-pay list pro by the last-mentioned section. *Opinic* 29, 1878, 16 Op. 22.

V. Officers, &c., in the Marine

319. The marine officers who were under section 4 of the act of March chap. 40, and restored under the nav priation act subsequently passed, ar titled to pay during the interval. *O May* 14, 1849, 5 Op. 101.

320. Brevet officers of the Marine (entitled to the same pay and emolumer are allowed to officers of similar grad infantry of the Army. *Opinion of Feb.* 5 Op. 513.

VI. Counsel Employed by Heac partment.

321. Counsel specially employed by retary of State to aid the district att the prosecution of persons accused engaged in illegal military enterprises should be paid out of the funds of t Department. *Opinion of March* 9, 18 355.

322. The act of February 26, 1853, regulates the amount of compensatior to counsel employed by the head of a ment by the agreement between the

ment and counsel. *Opinion of March* 19, 1859, 9 Op. 300.

323. In forming his judgment the head of a Department may submit the question to the President and adopt his opinion as to the proper sum to be allowed. *Ibid.*

324. When such a submission is made, and the head of the Department offers to pay the sum fixed by the President, and no more, he adopts as his own judgment the opinion of the President. *Ibid.*

325. The matter cannot be reopened by a succeeding head of the Department after it has been thus adjudicated by his predecessor. *Ibid.*

326. The fees of such special counsel are not chargeable to the judiciary fund. *Opinion of May* 9, 1861, 10 Op. 48.

327. The amount of such fees is a matter entirely for the determination of the head of the Department by whom the counsel is retained, and not for the decision of the Attorney-General. *Ibid.*

328. Counsel specially retained for professional services in a matter arising in the business of any of the Departments are paid from appropriate funds in charge of the particular Department at the order of which the services were performed. *Opinion of May* 13, 1861, 10 Op. 41.

329. In the case of an account for professional services in the investigation of the title to land purchased by the Government, presented by counsel employed to examine and give an opinion on the title, the proper criterion for determining, in the absence of express contract, the reasonableness of the account is the charge made in cases of like magnitude by lawyers of ability and reputation, or, if no such cases have occurred, the amount which lawyers of learning, ability, and reputation, equal to the duty, would charge for similar services. *Opinion of Sept.* 12, 1865, 11 Op. 349.

330. Claim of the counsel employed by the United States in the matter of the extradition of the "Saint Albans raiders," for professional services, considered. *Opinion of Oct.* 2, 1865, 11 Op. 360.

331. The matter of fees of counsel in the employ of a Department is under the exclusive control of the head of the Department employing the counsel. *Opinion of May* 5, 1868, 12 Op. 401.

332. The Secretary of War has the right to employ and pay special counsel to examine the title to lands purchased under the direction of his Department. *Opinion of June* 12, 1868, 12 Op. 416.

VII. Where Officer Holds more than One Office.

333. A person who holds both of the offices of clerk of a district court and clerk of a circuit court is entitled to the maximum allowance for each of them. *Opinion of Nov.* 2, 1858, 9 Op. 250.

334. An officer who has been appointed to and is fully invested with two distinct offices may receive the compensation appropriated for each. Sections 1763, 1764, and 1765 Rev. Stat. do not apply to such a case. *Opinion of May* 9, 1878, 16 Op. 7.

VIII. Extra Pay.

335. The proviso of the act of 3d March, 1835, chap. 26, prohibiting the payment of percentage to officers of the Army for any service or duty unless authorized by law, is a permanent provision, and cannot be avoided except by an express enactment; wherefore a commission cannot now be allowed to a paymaster on moneys paid out by him to the militia and volunteers serving in Florida. *Opinion of Oct.* 24, 1836, 3 Op. 153.

336. The clerk of the Navy and privateer pension and Navy hospital funds is entitled, over and above his salary, to a fair compensation for services performed by him in respect to the United States Coast Survey, as those services were no part of his official duty. *Opinion of June* 10, 1837, 3 Op. 245.

337. Clerks whose ordinary duties are prescribed by law, or by the head of the Bureau in which they are employed under the authority of law, who perform services additional to those which are in their line of ordinary duty, are equitably entitled to a just compensation therefor. *Opinion of April* 6, 1838, 3 Op. 324.

338. Clerks in the Fourth Auditor's Office are entitled to a fair compensation for services performed by them in relation to the Navy pension and Navy hospital funds, provided those services are not within the range of the powers

and duties assigned by law to the Office of the Fourth Auditor. *Opinion of May* 24, 1838, 3 Op. 330.

339. Where two clerks, employed by the Commissioner of Indian Affairs, whose salary had been fixed by the Secretary of War, claimed additional compensation under the provisions of the third section of the act of March 3, 1837, chap. 33: *Held* that they were not entitled to the benefit of that section, it applying only to those whose compensation has been fixed by Congress. *Opinion of Nov.* 6, 1838, 3 Op. 381.

340. The claim of General Scott for a compensation of $8 per day over and above his regular pay as major-general for superintending the removal of the Cherokees, under the direction of the Secretary of War, cannot be allowed without violating the proviso to the act of March 3, 1835, chap. 26. *Opinion of Dec.* 22, 1838, 3 Op. 395.

341. Nor though he were a special commissioner to effect that object. *Opinion of Feb.* 15, 1839, 3 Op. 416.

342. Clerks and others holding regular appointments to places created, and receiving specific salaries, affixed thereto by law, are not entitled to additional allowances for services rendered the Government as the agent for surveying and selling Indian lands, the same being prohibited by acts of Congress. *Opinion of March* 15, 1839, 3 Op. 422.

343. Extra compensation to persons entitled to salaries may be allowed only where money shall have been appropriated for the particular services for the performance of which it is claimed as a compensation. *Opinion of April* 4, 1839, 3 Op. 439.

344. In a case of a general appropriation of a sum of money for the accomplishment of a particular object, no part of it can be paid to a person receiving an annual salary, unless the services rendered are directed to be paid for by the act; nor can payment for such services be made out of the contingent fund. *Ibid.*

345. The chief messenger in the Treasury Department is not entitled to compensation over and above his salary for carrying the mails of the several offices occupying the southeast executive building to and from the post-office; but if he be required to furnish a horse for that duty, a reasonable compensation for that should be allowed. *Opinion of Sept.* 9, 1839, 3 Op. 473.

346. Nor are watchman entitled to extra compensation for labor performed in the offices during the day. *Ibid.*

347. All such claims for compensation come within the prohibitions of the third section of the act of Congress of March 3, 1839, chap. 82, upon which the views of the Attorney-General have been given. *Ibid.*

348. Since March 3, 1835, quartermasters have not been allowed any extra compensation on account of disbursements for public supplies. *Opinion of April* 17, 1840, 3 Op. 516.

349. Navy agents employed to make purchases or to perform any services for a Department other than the Navy Department are not entitled to extra compensation, unless compensation for the extra services is expressly authorized by law. *Opinion of Oct.* 3, 1840, 3 Op. 588.

350. The judge of the superior court at Saint Augustine cannot be allowed extra compensation for examining and adjudging certain cases of claims, as there is no appropriation for the services, and no provision for their payment in the act requiring them. *Opinion of Oct.* 21 1840, 3 Op. 589.

351. Clerks in the War Department are not entitled to extra compensation for attending to the business connected with the reservations under the Creek treaty of March 24, 1832. *Opinion of Feb.* 27, 1841, 3 Op. 621.

352. The executive department has no authority to give extra pay to the officers of the United States exploring expedition. The acts of March 3, 1835, chap. 27, and March 3, 1839, chap. 82, positively preclude extra payment to them unless a special appropriation therefor shall be made by Congress. *Opinion of Nov.* 29, 1842, 4 Op. 126.

353. The act of March 3, 1839, chap. 82, which is a perpetual law applying to all branches of the public service, expressly forbids any person whose salary, pay, or emoluments is fixed by law to receive any extra allowance or compensation in any form whatever for the performance of any service, unless the same shall have been authorized by law; and whatever may have been the discretion vested in the Executive before, it was taken away by that act. *Opinion of Dec.* 8, 1842, 4 Op. 128.

354. The Executive has no authority for allowing extra compensation to the officers at West Point, the same not being authorized by any law. *Opinion of Dec.* 23, 1842, 4 Op. 139.

355. The representatives of the late district attorney for the District of Columbia are not entitled to extra compensation for services rendered the United States by him in a proceeding by mandamus against the Postmaster-General for refusing to allow credits settled and adjusted by the Solicitor of the Treasury under the act of Congress of July 2, 1836, chap. 284, it being his duty to attend to the proceeding in behalf of the United States. Nor are they entitled as a matter of right to any compensation not stipulated to be paid him for assisting the Attorney-General in arguing the cause before the Supreme Court of the United States. *Opinion of July* 24, 1843, 4 Op. 191.

356. A commissioner for the exploration and survey of the northeastern boundary cannot be allowed extra compensation by the accounting officers, unless there shall be legislative action authorizing it. *Opinion of Oct.* 25, 1843, 4 Op. 269.

357. The district attorney for the southern district of New York may be allowed his fees and costs for defending the collector at the port of New York in cases in the State courts for repayment of duties in addition to the maximum allowance mentioned in the act of May 18, 1842, chap. 29, as the judicial department has thus decided in two several cases, in which the United States have acquiesced. *Opinion of Dec.* 15, 1843, 4 Op. 293.

358. Sergeants of the Marine Corps acting as clerks are entitled to extra pay for the extra service, allowance therefor, agreeably to the practice of the Navy Department, being impliedly sanctioned by Congress. *Opinion of May* 27, 1844, 4 Op. 325.

359. Though the claim be meritorious, a district attorney is not entitled to extra compensation for services rendered in prosecuting for violations of the law respecting post-offices. *Opinion of Oct.* 30, 1844, 4 Op. 347.

360. Extra compensation cannot be allowed an officer whose salary is fixed by law for the discharge of a public service, but traveling expenses may be. *Opinion of May* 7, 1845, 4 Op. 372.

361. A district attorney is not required by law to attend a State court, and where he is requested to do so by the Secretary of War, or other head of an Executive Department, he is entitled to be allowed a reasonable compensation for his services. *Opinion of Aug.* 3, 1846, 4 Op. 514.

362. An acting Secretary of State, or acting head of any other Department, is not entitled to the salary of the office fixed by law whilst the office is filled and the salary received by an incumbent duly nominated and appointed by the President and confirmed by the Senate. *Opinion of March* 1, 1849, 5 Op. 74.

363. If the duties of an office belong to an incumbent who receives the salary affixed to it, another officer performing those duties is prohibited from receiving therefor any compensation whatever. *Ibid.*

364. Since the act of August 26, 1842, chap. 202, no officer whose pay is fixed by law or regulation is lawfully entitled to any additional pay, extra allowance, or compensation in any form whatever, for any other duty or service, unless the same shall be authorized by law and the appropriation therefor explicitly set forth that it is for additional pay or extra compensation. *Ibid.*

365. Extra compensation paid to certain volunteers in the Mexican war, under the order of General Scott of 3d of May, 1847, is to be approved if there is a sufficient amount of the Mexican military contribution fund to meet the payments. *Opinion of Sept.* 15, 1849, 5 Op. 152.

366. The district attorney in Louisiana is not entitled to extra compensation for attending to certain land-claim suits brought against the United States under the authority given by the act of June 17, 1844, chap. 95. By the acts of September 24, 1789, chap. 20, May 26, 1824, chap. 173, and the said act of 1844, it was the official duty of the district attorney to appear and defend the United States in the suits in question; and whatever fees or compensation he is entitled to for the services must be taken and considered as part of the fees and emoluments of his office, as provided in the act of 18th May, 1842, chap. 29. *Opinion of Sept.* 30, 1850, 5 Op. 261.

367. Officers of the Army who during the war with Mexico aided in the collection of export and import duties at the ports and in the interior of Mexico may *retain* for their services so much of the amounts received as, in the

opinion of the President, is a fair compensation. *Opinion of March* 12, 1852, 5 Op. 521.

368. There is no law authorizing the payment of $149 to the district attorney of Florida for defending land suits, such payment being prohibited by the general appropriation act of May 18, 1842, chap. 29, section 173. *Opinion of July* 13, 1852, 5 Op. 567.

369. District attorneys are entitled to fair compensation for extra-official services performed at the request of a head of a Department. *Opinion of July* 27, 1852, 5 Op. 577.

370. The separate duties of the several clerks in the Departments, except where they are specifically designated in particular cases by statute, are assigned to such clerks by the head of the Department; and no posterior claim to extra compensation can be founded on the official acts done by a clerk, provided those acts constituted any part of the lawful general duties of the Department. *Opinion of June* 25, 1854, 6 Op. 583.

371. A district attorney may lawfully receive special compensation for extra-official services in the pursuit and collection of public funds embezzled by a deputy postmaster. *Opinion of Feb.* 23, 1855, 7 Op. 53.

372. A district attorney of the United States in charge of a suit in the courts of the United States in his district does not become entitled to extra compensation for service in the argument of said suit by reason of his receiving instructions relating thereto from the Secretary of the Navy. *Opinion of April* 7, 1855, 7 Op. 84.

373. The various provisions of law forbidding extra allowance or additional pay for extra service imply extra-service pay or allowance in the same office, not distinct service in distinct offices. *Opinion of Jan.* 17, 1857, 8 Op. 325.

374. The several acts of Congress relative to extra pay and double compensation for public service examined and reviewed. *Opinion of Oct.* 17, 1857, 9 Op. 123.

375. No officer of the Government having a salary fixed by law or regulation, or whose annual compensation exceeds the sum of $2,500, can receive extra pay or additional compensation for any public service whatever, whether it be in the line of his duty or outside of it. *Ibid.*

376. No officer of the Government can receive the salary of more than one office. *Ibid.*

377. Watchmen and messengers are excepted from the foregoing rules. *Ibid.*

378. A commodore's secretary cannot lawfully receive any extra allowance or compensation, in any form whatever, for any service which it is possible for him to render, either within the line of his duty or outside of it. *Opinion of Nov.* 10, 1858, 9 Op. 260.

379. The claim of Gilbert Rodman for compensation for services as chief clerk of the Treasury Department should be allowed, although during the same period he was acting as Solicitor of the Treasury and Fifth Auditor under special appointments and has been paid for his services in the latter capacity. *Opinion of March* 2, 1861, 10 Op. 9.

380. It is the appropriate and legitimate duty of the disbursing clerk of the State Department to take charge of and disburse the indemnity fund paid under the convention of the United States with Great Britain of February 8, 1853. He is not entitled to commissions on the fund for any services rendered in keeping and disbursing the same. *Opinion of April* 29, 1861, 10 Op. 31.

381. A compensation for extra services, where no certain allowance is fixed by law, cannot be paid by the head of a Department to any officer of the Government who has by law a certain compensation in the office he holds. *Ibid.*

382. The Secretary of the Interior has no power to allow district attorneys compensation in addition to the fees provided in the fee-bill (act of February 26, 1853, chap. 80) for the preparation and trial of cases which are under their official supervision. *Opinion of Sept.* 27, 1862, 10 Op. 351.

383. The opinions of the Attorney-General and Supreme Court of the United States on the construction of the acts of Congress relative to extra compensation of public officers considered. *Opinion of Jan.* 13, 1863, 10 Op. 436.

384. No discretion is left to the head of a Department to allow any officer who has a fixed compensation any credit beyond his salary, unless the service he has performed is required by existing laws, and the remuneration therefor is fixed by law. *Ibid.*

385. The Secretary of the Interior having

employed Mr. Whiting to aid in executing the law for suppressing the slave trade (act of March 2, 1861, chap. 84) at a fixed compensation of $2,000 per annum, had no legal power to employ him also to take charge of records, &c., of the work for the extension of the Capitol and erection of the new dome and pay him at the same time a separate compensation therefor out of the appropriation for that work. *Ibid.*

386. A clerk in the General Land Office receiving a salary of $1,600 per annum is not legally entitled to additional compensation or allowance for services in signing land-patents. *Opinion of Jan.* 13, 1863, 10 Op. 442.

387. The Secretary of the Interior has no lawful authority to pay a person holding the office and receiving the salary of superintendent of public buildings a separate and additional compensation for services as disbursing agent for the Capitol extension and erection of the new dome. *Opinion of Jan.* 13, 1863, 10 Op. 444.

388. The thirty-fifth section of the act of March 3, 1863, chap. 75, for enrolling and calling out the national forces, &c., does not forbid extra pay to enlisted men detailed for special service as clerks of the staff officers of the War Department. *Opinion of April* 3, 1863, 10 Op. 472.

389. An officer who temporarily performs the duties of a vacant office, under the provisions of the act of July 23, 1868. chap. 227, cannot be allowed for the period during which he discharges this service any salary, other than what is annexed to the office he holds, which would involve an increase of compensation. *Opinion of March* 26, 1869, 13 Op. 7.

390. The provision in the third section of that act which declares that "the officer so performing the duties of the office temporarily vacant shall not be entitled to extra compensation therefor" was designed to be general, and applies as well to those vacancies which are supplied by operation of the statute as to those which are filled by designation of the President. *Ibid.*

391. William T. Shirley, while a clerk in the War Department, performed extra services in the years 1865 and 1866, for which he now presents a claim for compensation out of an appropriation made by the act of May 18, 1872, chap. 172, "to enable the Secretary of War to pay for additional clerical services" theretofore employed by him, &c.: *Advised* that payment of the claim is prohibited by the act of August 26, 1842, chap. 202. *Opinion of Aug.* 14, 1872, 14 Op. 101.

392. Where a special agent of the Post-Office Department, in receipt of a fixed compensation, performed services as a deputy marshal: *Held* (upon consideration of section 1765 Rev. Stat.) that he cannot be allowed, in respect of such services, anything beyond *actual expenses* incurred. *Opinion of Jan.* 4, 1876, 15 Op. 71.

393. The act of 1842, chap. 183 (section 1765 Rev. Stat.), does not prohibit the minister resident at the Hawaiian Islands, who is allowed an annual salary, from receiving in addition thereto extra compensation for his services in supervising and taking testimony to be used in the Court of Commissioners of Alabama Claims, under the provisions of sections 4 and 11 of the act establishing that court. *Opinion of Feb.* 7, 1877, 15 Op. 608.

394. Where the service is one required by law, but not of any particular official, and compensation therefor is fixed by competent authority, and is appropriated, any officer who under due authorization performs the service is entitled to the compensation. *Ibid.*

395. Section 35 of the act of March 3, 1863, chap. 75, forbids the allowance of extra-duty pay to soldiers who are detailed for special service. *Opinion of Sept.* 4, 1877, 15 Op. 362.

396. The three months' extra pay provided by section 5 of the act of July 19, 1848, chap. 104, is a gratuity, the right to which, on the death of the officer or soldier without receiving the same, does not survive as part of his estate. The widow, children, parents, or brothers and sisters of the deceased officer or soldier do not become entitled thereto *jure representationis*, or in the quality of legal successors to his estate, but solely by force of their designation in the statute. *Opinion of Dec.* 16, 1879, 16 Op. 409.

397. On the 28th of May, 1880, D., being then a deputy surveyor of customs at the port of San Francisco (appointed with the approbation of the Secretary of the Treasury), whose salary as fixed by law (sections 2721 and 2746 Rev. Stat.) exceeded $3,000 per annum, was authorized by the collector of that port, under section 2629 Rev. Stat., to perform the duties and exercise the functions of surveyor at the same

port (there being a vacancy in this office, caused by the death of the late incumbent), and did perform such duties and exercise such powers until July 23, 1880, when the vacancy was filled by appointment by the President. *Held* (1) that the office of deputy surveyor held by D. did not become vacant upon his designation to act and by his acting as surveyor; (2) that he is not entitled to the compensation provided for the office of surveyor for the period during which he performed the duties and exercised the powers of that office. The allowance to him of any compensation beyond that attached to the office of deputy surveyor is forbidden by section 1763 Rev. Stat. *Opinion of Sept.* 28, 1880, 16 Op. 565.

IX. Withholding Pay.

398. It is not consistent with the relation between the Government and its officers for the former to make itself a creditor of the latter without their consent, and to detain their salaries in the discharge of debts so acquired. *Opinion of July* 22, 1824, 1 Op. 676.

399. The officers of the Treasury are authorized to withhold the pay of officers of the Government who are ascertained to be in default to the Government where the time for accounting has actually passed, but not otherwise. *Opinion of May* 24, 1842, 4 Op. 33.

COMPROMISE.

See also INTERNAL REVENUE, X; POSTAL SERVICE, V.

1. Where a suit under the internal-revenue laws is agreed to be dismissed upon payment of costs by the claimant and entry of certificate of probable cause of seizure, the same is an agreement for a compromise of the case within the meaning of section 102 of the act of July 20, 1868, chap. 186, and cannot take effect without the approval of the Commissioner of Internal Revenue, the Secretary of the Treasury, and the Attorney-General. *Opinion of Nov.* 28, 1868, 12 Op. 536.

2. The Secretary of the Treasury has power under the authority of the tenth section of the act of March 3, 1863, chap. 76, to compromise a claim against the surety in a forfeited recognizance for the appearance of a person charged with crime. *Opinion of Dec.* 14, 1868, 12 O 543.

3. Section 3469 Rev. Stat. does not con upon the Solicitor of the Treasury a discreti to recommend for compromise by the Secreta of the Treasury cases in which the claim entirely solvent, but where circumstances hardship, &c., exist. *Opinion of Jan.* 8, 18 16 Op. 617.

4. Under section 3469 Rev Stat. the Soli tor of the Treasury may properly recomme the acceptance of a compromise offered in d charge of a claim of the United States bef judgment, where the defendant is able to p the amount of the claim, but where the d trict attorney advises acceptance upon t ground that, from want of evidence to est lish the facts on which a verdict must depe he doubts his ability to obtain a judgme This case distinguished from that conside in the opinion of January 8, 1879 (16 Op. 61 *Opinion of Jan.* 30, 1879, 16 Op. 259.

5. Although the case may belong to t class of cases for relief in which special p visions are found in the act of June 22, 18 chap. 391, yet this does not prevent an ap cation for compromise thereof being ma under the more general provision in secti 3469 Rev. Stat. *Ibid.*

6. Certain land in Pennsylvania was set to the United States on execution against debtor, over which the Government subs quently exercised acts of ownership by leasi and offering the same for sale. One S. clai title to the land through certain persons wh as is alleged, owned it previous to the levy the execution; and, he being in possession, action of ejectment has been brought by t Government against him, which is still pen ing. He proposes to compromise by payi to the Government a certain sum, and t United States to abandon the suit and the ti to the property. *Held* that section 3469 R Stat. does not confer authority to entertain t compromise proposed. *Opinion of Oct.* 1, 18 16 Op. 385.

7. That section was intended to provide f compromising claims in favor of the Uni States which are of a personal character. does not extend to claims to real property which the United States asserts ownership a has a record title. *Ibid.*

8. A customs officer, having power to se

property claimed as forfeited for violation of the customs laws, who in the performance of his duty actually makes a seizure in order to enforce the claim of the Government to the property seized, is an "agent having charge of" the claim within the meaning of section 3469 Rev. Stat. In such case, upon a report from him recommending that the claim be compromised, the Solicitor of the Treasury would be authorized under that section to make a recommendation to the Secretary of the Treasury concerning the same matter. *Opinion of Oct.* 13, 1880, 16 Op. 570.

CONFEDERATE DEBT.

The payment of the confederate debt by the United States or the States cannot be prevented by legislation. *Opinion of Feb.* 28, 1866, 11 Op. 432.

CONFISCATION.

1. The right of the United States to the property of persons within the provisions of the confiscation act of July 17, 1862, chap. 195, is vested *eo instanti* on the commission of the offense which makes the forfeiture. *Opinion of July* 23, 1865, 11 Op. 288.

2. The property of Mrs. Johns is liable to confiscation unless relieved therefrom by operation of a pardon granted by the President. *Opinion of Sept.* 14, 1865, 11 Op. 356.

3. Advice as to the action proper to be taken by the Government to secure the determination of the questions arising in the case of Pierre Soulé. *Opinion of Feb.* 23, 1866, 11 Op. 429.

4. The Cooke's Foundery property should be proceeded against for forfeiture in the proper United States court in Georgia, and the claimant remitted by the Secretary of War to that forum for the ascertainment of his rights under the pardon granted him by the President. *Opinion of April* 25, 1866, 11 Op. 480.

5. The President has no power to restore property in the possession of a person claiming under a confiscation sale. *Opinion of Sept.* 27, 1866, 12 Op. 54.

6. The institution of proceedings against real property under the confiscation act of August 6, 1861, chap. 60, waives any claim on the part of the United States of title by conquest. *Opinion of Oct.* 5, 1866, 12 Op. 76.

7. Where a libel in confiscation against real property has been dismissed and the property has been ordered by the court to be restored to the administrator of the former owner, the fact that such administrator is the guardian of the heir of the estate and is an unpardoned rebel should not restrain the Executive from surrendering the property to him. *Opinion of Jan.* 5, 1867, 12 Op. 104.

8. A general review of the situation of the Memphis navy-yard property with reference to the provisions of the confiscation acts. *Opinion of March* 6, 1867, 12 Op. 125.

CONFLICT OF LAWS.

Consideration of the international relation of the period of majority in the United States. *Opinion of Aug.* 29, 1856, 8 Op. 62.

CONGRESS.

See also CONSTITUTIONAL LAW.

1. Congress is empowered by the Constitution to make rules for the government and regulation of the land and naval forces of the United States. *Opinion of April* 5, 1853, 6 Op. 11.

2. Joint resolutions of Congress are not distinguishable from bills, and, if approved by the President, or if duly passed without the approval of the President, they have all the effect of law. *Opinion of Aug.* 23, 1854, 6 Op. 680.

3. But separate resolutions of either House of Congress, except in matters appertaining to their own parliamentary rights, have no legal effect to constrain the action of the President or the heads of Departments. *Ibid.*

4. *Semble* that Congress cannot make a contract for the transportation of the mails or for any other administrative matter, that being parcel of the constitutional power of the Executive. *Opinion of May* 10, 1855, 7 Op. 135.

5. But it may, by appropriation, provide for paying an additional sum to a contractor as compensation, in the nature of a bill for private relief. *Ibid.*

6. The Committee on Accounts of the House of Representatives has exclusive and final ju-

risdiction to audit and settle accounts chargeable upon the contingent fund of the House. *Opinion of June* 7, 1858, 9 Op. 167.

7. Such accounts are not open to inquiry before the Auditor and Comptroller of the Treasury. *Ibid.*

8. The Sergeant-at-Arms of the House of Representatives is entitled to compensation for trouble and expense in summoning witnesses before committees of the House. *Ibid.*

9. The Senate has no power, by a resolution of its own, to direct the payment of the salary of a deceased member to his assignee. *Opinion of July* 19, 1860, 9 Op. 446.

10. By the act of July 11, 1864, chap. 119, a member of Congress elect is, previous to as well as after taking the oath of office, debarred from acting as counsel for parties, and from prosecuting claims against the Government, before any Department, court-martial, Bureau officer, or any civil, naval, or military commission, if he has received or has agreed to receive any compensation whatever, directly or indirectly, therefor. *Opinion of Nov.* 2, 1872, 14 Op. 133.

11. H., while acting as counsel of the United States before the joint commission between the United States and Great Britain, under an appointment by the President, was elected a Representative to the Forty-third Congress, the term whereof began on the 4th of March, 1873. On the 3d of March, 1873, an act was passed authorizing the President to continue him in his employment as such counsel, notwithstanding his election as aforesaid, until he should take the oath of office as a Representative in Congress. H. took the oath of office as a Representative December 1, 1873, up to which date he was continued in employment as counsel, and he received compensation for his services as such for the period between that date and the 4th of March, 1873. Question being raised whether he is entitled to receive also the salary of a member of Congress for the same period: *Held* that he is so entitled; that he is not affected by the prohibition contained in the first section of the act of September 30, 1850, chap. 90, against paying to one individual the salaries of two different offices. *Opinion of June* 6, 1874, 14 Op. 406.

12. A Representative-elect does not become a member of the House within the meaning of section 6, Article I of the Constituti he is sworn in as such; and hence he then lawfully hold office under th States. *Ibid.*

13. In June, 1876, R. entered into with the Quartermaster's Departme fiscal year ending June 30, 1877. He wards (in the fall of 1876) elected a to the Forty-fifth Congress. That Co having as yet (in May, 1877) met, a being as yet a member of that body: the provisions of sections 3739 and 3 Stat. have no application to him. W the Congress should meet, and R. s sworn in as a Delegate during the co of his contract, the latter would th annulled, is not considered. *Opinio* 19, 1877, 15 Op. 281.

CONGRESSIONAL PRIN

See also PRINTING.

The fourth section of the act of 1864, chap. 155, making it the dut Superintendent of Public Printing " to be printed, and stitched in pape twenty-five hundred copies of the a ports of the Executive Department use of said Departments, respectivel pealed by the provisions of the third a sections of the act of May 8, 1872, c And hence a requisition made by the sioner of Agriculture, under the fourt of said act of June 25, 1864, would no ize the Congressional Printer to prin five hundred copies of the annual rep former for the use of the Departmen culture. *Opinion of April* 2, 1873, 14

CONQUEST.

The conquest of a country or por country by a public enemy entitles su to the sovereignty and gives him civ ion as long as he retains his milita sion. Inhabitants and strangers wh during the occupation of the enemy n the law from him as the ruler *de*

not from the government *de jure* which has been expelled. *Opinion of May* 15, 1858, 9 Op. 140.

CONSTITUTIONAL LAW.

See also CONGRESS.

1. The act of South Carolina authorizing the seizure and imprisonment of persons of color who may come into any of her ports from any other State or any foreign port until the vessel to which they may be attached shall depart is void, as being against the Constitution, treaties, and laws of the United States, and is incompatible with the rights of all nations in amity with them. *Opinion of May* 8, 1824, 1 Op. 659.

2. By the national Constitution the power of regulating commerce with foreign nations and among the States is given to Congress; and this power is, from its nature, exclusive. It is the power of prescribing the terms on which the intercourse between foreign nations and the United States, and between the several States of the Union, shall be carried on. Congress has exercised this power; and among those terms there is no requisition that the vessels permitted to enter the ports of the several States shall be navigated wholly by white men. All foreign and domestic vessels complying with the requisitions prescribed by Congress have a right to enter any port of the United States, and a right to remain there, unmolested in vessel or crew, for the peaceful purposes of commerce. *Ibid.*

3. The act of South Carolina, called the port or police bill, authorizing the seizure and detention of free persons of color within the limits of that State, having for its object the regulation and government of free persons of color within the limits of that State, as strictly belongs to her internal police as a law regulating the course of descents, or one defining the crime of murder and prescribing the penalty which shall attach to its commission, and is valid. If there be laws of the United States passed in the exercise of the right to regulate commerce, they cannot control the exercise of this reserved power, except so far as they may be necessary to the preservation of the commerce of the Union. *Opinion of March* 25, 1831, 2 Op. 427.

4. The fugitive-slave act of September 18, 1850, chap. 60, is not in conflict with the provisions of the Constitution in relation to the writ of *habeas corpus*. *Opinion of Sept.* 18, 1850, 5 Op. 254.

5. The act of Congress of September 18, 1850, chap. 60, is a valid and constitutional act. *Opinion of Sept.* 11, 1854, 6 Op. 713.

6. The expression "ambassadors and other public ministers," which occurs three times in the Constitution, must be understood as comprehending all officers having diplomatic functions, whatever their title or designation. *Opinion of May* 25, 1855, 7 Op. 189.

7. Within their respective spheres of action the Federal Government and the government of a State are both of them independent and supreme, but each is utterly powerless beyond the limits assigned to it by the Constitution. *Opinion of Nov.* 20, 1860, 9 Op. 517.

8. If the feeling against the United States in any State should induce the Federal officers to resign and render it impossible for the President to fill the offices by the appointment of other persons, a military force would be out of place and its use wholly illegal. *Ibid.*

9. If a State should declare her independence the President would have no power to recognize her independence or absolve her from her Federal obligations. *Ibid.*

10. Although it is clear that the Constitution does not give Congress power, either expressly or by implication, to make war against a State, and to require the Executive to carry it on by force drawn from the other States, yet that question is one for Congress itself to consider. *Ibid.*

11. If it be true that war cannot be declared, nor a system of hostilities carried on by the Federal Government against a State, it follows that an attempt to do so would be, *ipso facto*, an expulsion of such State from the Union; and in that event, it would seem, all the States will be absolved from their federal obligations. *Ibid.*

12. The General Government may lawfully repel a direct aggression on its property and officers, but cannot carry on an offensive war to punish the people for the political misdeeds of their State government, or to prevent threat-

ened violation of the Constitution, or to enforce an acknowledgment that the Government of the United States is supreme. *Ibid.*

13. In all cases of plain and obvious conflict between the provisions of the Constitution and the provisions of a statute, not only the judiciary but every department of the Government required to act upon the subject-matter must determine what the law is, and obey the Constitution. *Opinion of June* 12, 1861, 10 Op. 56.

14. Congress, by Article IV, section 3, of the Constitution, has power to *admit* new States into the Union, but cannot make, form, or create new States. A free American State can be made only by its component members, the people. *Opinion of Dec.* 27, 1862, 10 Op. 426.

15. The bill for the admission of the State of West Virginia into the Union is not warranted by the letter of the Constitution, whether the provisions of section 3, Article IV of that instrument be construed as prohibiting the formation of a new State within the jurisdiction of any other State, or as authorizing such formation with the consent of the legislatures of the States concerned. *Ibid.*

16. The sense and spirit of the constitutional provision mentioned require that the legislature which gives consent on behalf of a State to the formation of a new State within its jurisdiction should be a legislature representing and governing the whole, and not merely a part, of such State. *Ibid.*

17. The legislature which, at Wheeling, on May 13, 1862, gave its consent to the dismemberment of the State of Virginia, being composed chiefly, if not entirely, of persons representing the forty-eight counties which constitute the State of West Virginia, was not a legislature competent to give consent, on behalf of Virginia, to the formation of West Virginia. *Ibid.*

18. On account of its intrinsic demerits and its revolutionary character, the Attorney-General gives it as his opinion that the act in question is highly inexpedient and improvident. *Ibid.*

19. The twelfth section of the act of March 3, 1865, chap. 79, providing, in certain contingencies, for the restoration of an officer dismissed from the military or naval service, is constitutional under the fourteenth clause of section 8 of article 1 of the Constitution of th States. *Opinion of Aug.* 6, 1866, 12 (

CONVICTS.

1. District courts of the United Sta power to provide specially for the con of persons convicted by Federal law, i admission into the jails of the State. case the prisoner may be confined in tentiary of the District of Columbia. *of Jan.* 9, 1856, 7 Op. 615.

2. The United States not possess places of imprisonment within the Sta eral convicts are admitted by each S its prisons on conditions agreed for th nification of the State; and although so employ a Federal convict as to d turns from his labor, still it may dem pensation for entertaining him in its tiary, to be paid by the United States *ion of Jan.* 5, 1857, 8 Op. 289.

3. The compensation in such case i the State as such, but is payable to fully appointed agent of the State. *J*

4. Insane convicts in the penitentia District of Columbia may be transferr insane asylum on order of the Secreta Interior. *Opinion of Feb.* 14, 1857, 8

CONSUL.

See DIPLOMATIC AND CONSULAR OFFI

CONSULAR COURT.

1. The act of August 11, 1848, cl giving certain judicial powers to and consuls of the United States in C Turkey, not having designated any p place for the confinement of prisoner for crime, the same is left for regulati the fifth section, or, in the absence of regulation, to the discretion of the act tionary. *Opinion of Jan.* 31, 1849, 8

2. The expenses of arrest and su prison in such cases must be paid fund created by the execution of *Ibid.*

3. Whether the act embraces Egypt and the Barbary States, which are under the dominion of the Ottoman Porte, is a political question, which cannot be solved without the aid of the Department of State. *Ibid.*

4. In the absence of any specific appropriations for the object, the expense of transporting prisoners held for trial by the authorities of the United States in China are a lawful charge on the general appropriations for defraying the judicial expenses of the Government. *Opinion of June* 28, 1853, 6 Op. 59.

5. In virtue of the treaty between the United States and China, all citizens of the United States in China enjoy complete rights of exterritoriality, and are amenable to no authority but the United States. *Opinion of Sept.* 19, 1855, 7 Op. 496.

6. The act of August 11, 1848, chap. 150, empowers the commissioners and consuls of the United States in China to exercise judicial authority over their fellow-citizens. *Ibid.*

7. The several consuls, each in his consular circumscription, have, by express provision of statute, original jurisdiction in all civil cases of contract, or the like sounding in damages, which arise between two or more citizens of the United States, and in all crimes committed by an American. *Ibid.*

8. In such civil matters of contract, or the like sounding in damages, the consul sits with or without assessors, according to circumstances; and in case of difference of opinion between him and his assessors, an appeal lies to the commissioner. *Ibid.*

9. In all criminal matters, except certain petty misdemeanors, the consul sits with assessors, and decides, subject to appeal, as in civil cases, to the commissioners, save that in capital cases there is no appeal; but the conviction is invalid unless approved by the commissioner. *Ibid.*

10. In controversies between citizens of the United States and subjects of China the case is to be tried by the court of the defendant's nation; and so in controversies between citizens of the United States and those of any friendly foreign Government. *Ibid.*

11. The consular court has no authority by the treaty or the statute to entertain jurisdiction of a suit by the Chinese Government for duties. *Ibid.*

12. In all criminal matters, and in all civil matters of contract or the like sounding in damages, the commissioner has only appellate jurisdiction. *Ibid.*

13. As to all other matters, such as probate of wills, divorce, intestacy, copartnership, chancery, admiralty, proceedings *de re* or *in rem*, personal or prerogative writs, division of lands, and the like, the statute makes no specific provision, leaving them to regulations of the commissioner and consuls. *Ibid.*

14. Vice-consuls are competent to act when duly appointed or approved as such by the Secretary of State. *Ibid.*

15. A United States consular court in Japan cannot, in the case of a suit by a person not a citizen of the United States against an American merchant, entertain a plea of set-off further than to the extent of the claim asserted by the plaintiff. *Opinion of April* 21, 1866, 11 Op. 474.

16. Such a court cannot, under the treaty with Japan and the statutes of the United States (act of June 22, 1860, chap. 179), render a judgment against a person of foreign birth not a citizen of the United States. *Ibid.*

17. The consular courts of the United States at Honolulu have the right and power, without interference from the local courts, to determine, as between citizens of the United States, who comprise the crew of an American vessel, and are bound to fulfill the obligations imposed by the shipping articles. *Opinion of June* 26, 1866, 11 Op. 508.

18. In the case of consular courts clothed with criminal jurisdiction, as in the case of other courts invested with similar jurisdiction, the rule applies that a sentence of imprisonment cannot be legally executed beyond the territorial jurisdiction of the court which pronounced it, unless authority thus to execute the sentence is conferred by the legislature. *Opinion of Feb.* 4, 1875, 14 Op. 522.

19. Hence, in the absence of any law giving power to send the convicts of the consular courts at Smyrna and Constantinople to this country for imprisonment, if such convicts were brought to the United States for that purpose they could not legally be held. *Ibid.*

20. *Semble* that, under present statutory provisions (see Revised Statutes, sections 4121 to 4125, inclusive), it is contemplated that the sentences of those courts, pronounced in the exercise of their criminal jurisdiction, are to

be executed only in the country where the trial and conviction were had. *Ibid.*

CONTRACT.

See also INDIANS, II; POSTAL SERVICE, II.

I. *Generally.*
II. *Authority to make.—Parties.*
III. *Advertisement.—Proposals.—Bidders, &c.*
IV. *Condition.*
V. *Assignment of.—Annulment.*
VI. *Error.—Rescission.—Forfeiture.—Damages.*
VII. *Release of Contractor.*
VIII. *Payment.*

I. Generally.

1. The stockholders are not individually liable for the notes of the Saline Bank, for the reason that both the notes issued by the bank and the discount notes given to it are contracts founded in a breach of the law, and which a court will not aid in enforcing. *Opinion of June* 29, 1818, 1 Op. 214.

2. Where contracts for supplies for the Army contain the clause providing for a supply in case of deficiency by the commanding general, or person appointed by him at each post or place, the person appointed by the commanding general to take command at the post or place is the person authorized to supply the deficiency. *Opinion of March* 26, 1819, 1 Op. 260.

3. Where the commandant at a post anticipates a failure in supplies contracted to be furnished, he may make provision for them before the failure absolutely occurs; yet the contractor is not liable for them until the failure takes place; then he is liable, whether they were purchased previously or subsequently, for it is the *failure* and *time* upon which the responsibility arises. *Ibid.*

4. If a general had a right to draw supplies, from a place out of his military department, through the enemy's country, he was bound to furnish an escort from that place through that country. If the case were one of real and imminent danger, the contractor ha right to an escort; and if it were not furnis he is exonerated from the consequences of failure. *Ibid.*

5. Where, in a contract to furnish supp it was agreed in case of failure "that commanding general, or person appointe him, at each post or place, should have power to supply," &c.: *Held* that the tractor was not liable to pay for rations in of his failure, except such as were furni by the commanding general, or person pointed by him, at the post or place where rations were stipulated to be furnished. *ion of May* 3, 1819, 1 Op. 270.

6. The general power given to the Presi to lease the saline on the Wabash carries it all the incidental powers necessary to a tlement with the lessees to transfer the le to a subsequent lessee, or to a former one a debt growing out of a lease of the w *Opinion of April* 22, 1820, 1 Op. 352.

7. Lessees are not entitled to compens for pipes found by them on the premises paid for to the preceding lessees, but onl permanent and useful improvements mad them, and which were previously autho by the President. *Ibid.*

8. The contractor to build a light-hou the mouth of the Mississippi is not answe for the failure of the foundation unless choice of the same were left to himself. *ion of June* 6, 1820, 1 Op. 372.

9. Contracts for rations which provide supplies for certain posts shall be furni *six months in advance*, require a supply o months' rations not in advance of a per ally advancing point of time, but only i vance of the point of time at which the su is required to be placed at the post. *Op of Aug.* 8, 1820, 1 Op. 389.

10. The distinction made in the Depart between rations in deposit and rations for issues has no warrant in the Army conti nor can any military order create it in s way as to affect the bearing of such conti A quantity of provisions only, called a su of rations for a specified time, is required those are to be issued by the contractor; in case the commandant of the post where are to be furnished makes an order for rations, or for a different disposition of than the contract provides, it is imper

upon the question of the contractor's legal obligations under the contract, but does not exonerate the Government from payment. *Ibid.*

11. If the contractor for supplies for daily issues shall be required to place at a given post a specified number of rations for a specified time, the Government must either consume them or pay for them; for the requisition is an assurance on the part of the Government that the rations are necessary and will be consumed and paid for. *Ibid.*

12. Contractors with the Government, to whom advances have been made by the Department, are not the persons intended by "persons in arrears" in the act of May 1, 1822, chap. 89, who are to pay all arrears into the Treasury before they can proceed further with the fulfillment of their obligations. *Opinion of June* 6, 1822, 5 Op. 745.

13. Where the office of architect of the public buildings was offered to the acceptance of an individual at a specified salary, and the offer was accepted, such offer and acceptance became a contract with the individual during the continuance of the work. *Opinion of Feb.* 26, 1823, 5 Op. 754.

14. A purchaser of a tract of land as to part of which there was authority to sell, and as to the other part there was not, has the option to avoid the entire contract or to receive a patent for such part as could be sold. *Opinion of Oct.* 22, 1828, 2 Op. 186.

15. Where the Government agreed with W. & T., Army contractors, to furnish a proper storehouse in which the provisions were to be deposited from time to time and kept, and that they should suffer no loss for the want of it; and where provisions furnished under such a contract at Fort Saint Philip were in a temporary building outside the fort, on the margin of the river, and exposed to its overflowings, and were destroyed by flood: *Held* that the Government was liable for such loss. *Opinion of Feb.* 11, 1831, 2 Op. 408.

16. Where a vessel was chartered by the Navy agent to convey certain supplies to the Pacific, with stipulations to proceed first to Valparaiso to receive orders as to the discharge of her cargo, and then, in conformity to such orders as should be there received, either to discharge the cargo there or to proceed to Lima and discharge there: *Held* that the charter-party contemplated only one port of delivery. *Opinion of Jan.* 7, 1835, 2 Op. 697.

17. A portion of the freight having been discharged at Valparaiso and the balance at Lima, a case has occurred which was not provided for nor contemplated in the contract, and which ought to be settled by the general rules of law and equity, aided by the analogous provisions contained in the special agreement. *Ibid.*

18. In the case under consideration the shipowner is entitled, at his option, to consider either Valparaiso or Lima the port of delivery, and to apply to the case, after making his selection, the special provisions of the charter-party. *Ibid.*

19. The risk of supplies purchased for the Army follows the title. The title to a quantity of pork contracted for by the proper officer, prepared and designated by the vendors, and an order given upon the packers for it, is in the United States; and if it be then destroyed, the loss must fall upon the Government. *Opinion of May* 12, 1836, 3 Op. 115.

20. Where a contractor for certain specified rations for the Army, to be delivered at a particular place, including a certain ration of distilled liquor, was, after the execution of his written contract, directed by the War Department to furnish an additional ration of liquor to the troops on fatigue duty: *Held* that he had the right to elect, in respect to the price, to furnish such ration under his contract, or to demand the fair market value thereof at the time and place. *Opinion of May* 15, 1839, 3 Op. 463.

21. Where the district court has so found, and Congress has recognized and confirmed the principle, the accounting officers are required to do so likewise in their settlement of the account. *Ibid.*

22. Where a contractor for Army supplies agreed to furnish for the Army, upon the requisition of the commandant, a supply of provisions for six months in advance, at Detroit, and for nine months at Mackinac, and was required by the commanding officer to deposit more rations than were required for six months' supply of the troops stationed at Detroit, and 10 per cent. in addition for contingencies, and the question of the rate of compensation for the excess having been passed upon by a court, and the matter sent to the accounting

officers to be adjusted on principles of justice and equity, by an act of Congress requiring them to recognize the judicial decision: *Held* that the contractor must be held to supply at his contract price the amount necessary for six months' supply at Detroit, and nine months' supply at Mackinac, and 10 per cent. besides for contingencies, and no more, and that for the excess he should be allowed the fair market value. *Opinion of April* 30, 1840, 3 Op. 525.

23. The proviso contained in the act of 3d March, 1843, chap. 83, as to how supplies are to be furnished for the Navy, does not affect contracts previously made. *Opinion of March* 16, 1843, 4 Op. 151.

24. A retroactive effect, especially where it would be a violation of contracts, is not to be given, by construction, to the words of a statute, unless they are too express to admit of any other interpretation. *Ibid.*

25. The written proposal of the Secretary of the Navy, in reply to a letter of the owner of certain lots situate on Wallabout Bay, containing an offer of sale, and a statement that if the offer should be entertained the question of final purchase might be left open until the adjournment of Congress, to the effect that he would recommend to Congress to appropriate a certain sum for the purchase of said lands for the Government, with the understanding that the owner should make a perfect title, &c., and accepted by such owner, did not bind the Government so far as to subject it to the payment of assessments upon the land subsequently levied by the corporation of the city of Brooklyn. *Opinion of Aug.* 7, 1848, 5 Op. 15.

26. The Secretary had no right to contract for the land without authority from Congress, and now has no right to agree to pay for the same any sum beyond the amount appropriated. *Ibid.*

27. It is incumbent on the owner to remove the incumbrance from the premises. *Ibid.*

28. Where the Government entered into a contract with an individual for removing the Miamies, estimated at 650 souls, from Indiana to the country assigned them west of the Mississippi, and to subsist them, &c., for the sum of $55,000, upon condition that should the number be greater or less, there should be neither addition nor reduction of the amount, and that he should not use any force to compel them to emigrate; and the said contractor, pursuant thereto, removed and subsisted 384 the Indians, being all who were found willi to emigrate: *Held*, that said contractor has entitled himself to the whole sum stipulated removing and subsisting the tribe. *Opinion Jan.* 17, 1849, 5 Op. 64.

29. The contract for embankment in t navy-yard at Memphis is not within the tr meaning of the proviso in the naval appropri tion act of 3d March, 1843, chap. 83. *Opini of April* 20, 1849, 5 Op. 89.

30. It is a well-settled rule of constructio that a specification of items, followed by ge eral terms, restrains such terms to items of like character with those specified. *Ibid.*

31. Contracts for building iron steamers Pittsburgh, and furnishing engines therefc are to be construed according to their obvio meaning, independently of any antecedent co tract between the same parties, and of any o ders, written or verbal, which any officer of t United States may have given concerning the before they were entered into. *Opinion of N* 5, 1849, 5 Op. 171.

32. Congress having contemplated the co struction of five steamships for the mail se ice, and for the ultimate augmentation of t naval armament, and having, by act of Augu 3, 1848, chap. 121, authorized advances to made therefor only upon each of them after should be launched, and the contractors havi received the ratable proportion of the amou authorized upon the four of them now afloa no further advances can be legally made un the fifth shall be launched. *Opinion of Au* 20, 1850, 5 Op. 245.

33. The advances of money authorized we intended to be so made as to insure and hast the building of every one of the five ships co tracted for. *Ibid.*

34. Opinion of August 20, 1850 (5 Op. 24 reconsidered; the Attorney-General adheri to the construction of the provisions of the a of August 3, 1848, chap. 121, there given, being most conformable to the language the statute. If, however, the Secretary of t Navy shall adopt, from equitable consider tions arising from the fact that the four steai ers already built are equal in power and to nage to the five contracted for, and fully ad quate to the mail service, or for any oth reason, a different construction, it may not l

improper. *Opinion of Sept.* 17, 1850, 5 Op. 253.

35. The Government having stipulated that the granite to be furnished from the quarries in Quincy, Massachusetts, for the custom-house at New Orleans, should be inspected, approved, and the quantity thereof determined by an inspecting agent of the United States, to be designated or appointed by the Secretary of the Treasury, at Boston or Quincy, cannot now legally insist upon transferring the inspection and admeasurement to New Orleans. *Opinion of Jan.* 29, 1851, 5 Op. 296.

36. Neither the workmanship nor the admeasurement of the granite was stipulated to be adjudged and determined at that place. *Ibid.*

37. The Government is bound and concluded by the admeasurement certified at Boston or Quincy, by the agent of the Government there; subject, however, to the abatement of damage sustained during the voyage, or breakage in landing on the levee, or defect in the quality of the stone when finally delivered. *Ibid.*

38. D. and M. entered into a contract with the Secretary of the Navy to construct a floating dry-dock, basin, and railway, at such place in the navy-yard at Philadelphia as the Department might select for shoring and securing certain vessels of the line; and, on the completion of the same, the experiment of docking a vessel failed because of insufficient depth of water: *Held*, that the contractors had fully performed the stipulations in their contract and were not responsible for insufficiency of water. *Opinion of Oct.* 27, 1851, 5 Op. 407.

39. The twenty per cent. retained by the United States on all payments made to the contractors should now be paid them. *Ibid.*

40. A provision of statute (joint resolution of May 9, 1848) empowered the Secretary of the Navy to make a contract on time for the supply of American water-rotted hemp, but the power was not executed. A subsequent provision (act of March 3, 1851, chap. 34) contained appropriation for the object, but required purchase in open market: *Held*, that the latter provision so far repealed the former, that a contract on time for this object, afterwards made by the Secretary of the Navy, was void for want of power. *Opinion of June* 3, 1853, 6 Op. 40.

41. The distinction in the administrative law of the United States between purchase in open market, and by contract, discussed and defined. *Opinion of Sept.* 5, 1853, 6 Op. 99.

42. Congress, by act of May 31, 1848, chap. 52, authorized the Secretary of State to purchase of Mrs. Madison "all the unpublished manuscript papers of James Madison, now belonging to and in her possession," for a certain sum of money. Mrs. Madison conveyed and delivered to the Secretary of State such papers as she understood to be intended by the act, but without schedule or inventory, and they were so accepted and paid for by the Secretary. Meanwhile, other manuscripts of Mr. Madison remained in her possession, and were disposed of by her son and executor: *Held*, that the contract, and delivery, and acceptance of manuscripts, with accompanying explanations between Mrs. Madison and the Secretary of State, disposed of the question of what manuscripts were intended by the act of Congress. *Opinion of April* 14, 1855, 7 Op. 105.

43. *Semble* that Congress cannot make a contract for the transportation of the mails or any other administrative matter, that being parcel of the Constitutional power of the Executive. But it may, by appropriation, provide for paying an additional sum to a contractor as compensation, in the nature of a bill of private relief. *Opinion of May* 10, 1855, 7 Op. 135.

44. In a contract for supplies entered into by the United States, it was expressly stipulated that the Government should not be held to recognize or to pay any assignee of the party, or any persons but him or his duly appointed attorney: *Held* that such a stipulation can be lawfully made, and that under it the Government are not bound to regard any pretended assignees of the contract. *Opinion of May* 12, 1856, 7 Op. 683.

45. Where a contingent agreement was made for the purchase of property by the Secretary of the Treasury, and the same Secretary who made the agreement refused to take the property, on the ground that the contingency had not occurred, and notified the vendor that such was the determination of the Government, a succeeding Secretary is not authorized to treat the contract as still in existence. *Opinion of Sept.* 2, 1857, 9 Op. 76.

46. Where a building contract provided that nine-tenths of the value of the work done, and materials furnished should be paid from time

to time as the work progressed, it was held that by the terms of the contract the actual value of the work done and materials furnished should be estimated, and not a sum bearing to that value the ratio of the contract price for the whole work to the estimated actual cost of the same. *Opinion of Sept.* 30, 1858, 9 Op. 154.

47. Where in a contract for the furnishing of flour to the Army it was stipulated that the commanding officer of the post should reject all or any part of the flour tendered, when pronounced by the inspectors as not being in accordance with the contract, it was held that the decision of the officer commanding the post was subject to review by the War Department. *Opinion of April* 19, 1859, 9 Op. 389.

48. Where in the same contract, the agreement was to furnish "good, fresh, merchantable, superfine flour, the best that is manufactured in the Territory of Utah," it was held that the contract was complied with by a tender of "good, fresh, merchantable, superfine flour," as those terms are understood in Utah, though the flour was not of the best quality manufactured in the State. *Ibid.*

49. Where by the terms of a contract for the transportation of supplies to the Army a schedule of prices for the carriage of the goods was established varying according to the season of the year, but by the literal terms of the instrument the time of starting was indicated as the date to which reference must be made in ascertaining the rate of compensation for any single trip, it was held, that for trips in which the trains that started in the summer were detained by the Government's agents so long as to be forced to perform the greater part of the journey in the time of the year when the difficulties of transportation were at their worst, the contractors were entitled to such compensation as would have been payable if the trains had started at a time which, without delay, would have compelled them to travel in the inclement season. *Opinion of July* 16, 1860. 9 Op. 444.

50. The Government having made a contract with certain parties (Degges & Smith), for whom others (Mechlin and Alexander) became sureties, and the principals having failed, the sureties employed De Groot as their agent to execute the contract, and gave him authority to receive the price of the brick in their names without any assignment of the contract, it was *held* that De Groot was not made a contractor with the Government, and had no right, as against the United States, to the profits of the contract. *Opinion of Sept.* 20, 1860, 9 Op. 480.

51. Where the Postmaster-General, under authority of an act of Congress, made a contract for the purchase of land for a post-office site in the city of New York, which stipulated for the payment of the agreed price when the Attorney-General approved the title and the conveyance was executed: *Held* that after the execution of the deed by the vendors, and the Attorney-General certified that a valid title to the land had been thereby vested in the United States, the Postmaster-General had no power, under the act, to make any new contract of purchase for the same or other property, and that the vendors were entitled to receive the purchase-money. *Opinion of May* 6, 1861, 10 Op. 35.

52. Where the Secretary of the Treasury made a contract to allow an individual a certain compensation for furnishing information by which the United States could recover certain property long lost sight of, which information was not matter of professional skill or learning, but knowledge of a fact which might have been in the breast of any man: *Held* that the contract was in violation of the act of May 1, 1820, chap. 52, and that payment could not be made of the stipulated compensation under the authority of the act of February 26, 1853, chap. 80. *Opinion of May* 13, 1861, 10 Op. 41.

53. Where the Navy Department entered into a contract with A. B., who agreed to furnish each year, for a certain length of time, and at a certain price, forty thousand pounds of Navy butter, and also to furnish at the same price any additional quantity of the article that the Department might require: *Held* that the Department was not bound to receive from the contractor, during the time mentioned, any additional quantity of butter, which the exigencies of the service might require, beyond the forty thousand pounds stipulated to be furnished during each year. *Opinion of Aug.* 2, 1861, 10 Op. 93.

54. The contract between the Secretary of the Treasury and Mather and others, relating to labor in the appraiser's stores in New York, expired on September 5, 1862. *Opinion of Sept.* 6, 1862, 10 Op. 338.

55. In the case of the Amoskeag Company

(which relates to a contract for arms, by the terms whereof the War Department agreed to purchase, at a stated price, all the carbines which a contractor could make in six months, not to exceed six thousand, to be inspected, approved, and delivered, as provided in the agreement), upon the facts submitted the United States are not considered legally bound to accept the arms and pay for them, or to pay damages for not accepting them. *Opinion of May* 15, 1869, 13 Op. 46.

56. By the terms of a contract with B., for the transportation of military supplies from Fort Leavenworth to Salt Lake City, it was agreed that in case any of the trains of the contractor were stopped at any time or place *en route* over two days, by an yact of the Government, he should be allowed demurrage at a certain rate; and that all orders from officers of the Government to halt trains should be in writing, &c.: *Held* that for the stoppage of a train made by order of an officer of the Government, issued at the request or solicitation of, or in pursuance of an agreement with, a servant of the contractor in charge of the train, the United States would incur no liability under the contract; but that mere acquiescence, without protest, on the part of the servant, in an order given by such officer to stop the train, would not prejudice the rights of the contractor. *Opinion of June* 14, 1869, 13 Op. 92.

57. By an arrangement made between the Secretary of War and the governor of Massachusetts, it was agreed that the expense of transporting certain companies of cavalry, raised and mustered into the United States service in California, from the latter State to Massachusetts, where they were to form part of a Massachusetts regiment and be sent to the field as such, should be paid by Massachusetts; subsequently the men were mustered out of service in Virginia: *Held* that there was no legal obligation on the part of Massachuchusetts to defray the expense of returning the men to the place of muster. This expense primarily devolved upon the United States, in whose service the troops were employed, and was not assumed by Massachusetts by the agreement referred to. *Opinion of June* 15, 1869, 13 Op. 101.

58. By the terms of a charter-party, the United States agree to make compensation to the owner of the chartered boat in case of her injury or destruction "by any event not incident to the navigation of the river or rivers on which she may be employed": *Held* that the loss of the boat by sinking, in consequence of carelessness on the part of somebody or other, is not a loss by an event "incident to the navigation of the river," within the meaning of that agreement; that those words have substantially the same signification as the words "perils of navigation," or "dangers of the seas," or "dangers of navigation." *Opinion of July* 6, 1869, 13 Op. 120.

59. If the boat was lost through the negligence or carelessness of the employés or servants of the owner, the United States are not liable; but it would be otherwise if the loss occurred solely through the carelessness or negligence of the officers or agents of the Government. *Ibid.*

60. B, the owner of land, leased it to H, with the privilege of purchasing an interest therein at a certain price during the term, and also with the privilege of letting it to the Government for a reasonable time beyond the term; the lease contained a provision that if the lessee should not elect to purchase during the term, his contract with the Government, in case the land were let thereto, should be transferred to the lessor; the land was let to the Government for such period as it might be required thereby; and the term of the original lease having subsequently expired, and it being a disputed fact whether the lessee had elected to purchase within the term or not: *Advised* that if a new lease of the premises is desired by the Government it should be entered into with B, and not with H; but that the rent due under the existing contract between the Government and the latter, which has accrued since the expiration of the original lease, cannot, under the circumstances, safely be paid to the former. *Opinion of July* 12, 1869, 13 Op. 124.

61. In August, 1864, the Postmaster-General, after previous advertisement for proposals, made a contract with one N. for furnishing the Government with stamped envelopes and newspaper wrappers, the term of which extended from September 12 to December 31, 1864; the advertisement did not provide for any extension of the contract beyond that term, but the contract contained a provision that it might be extended or modified by mutual

agreement; the contract was subsequently modified and extended to April 1, 1866, again to April 1, 1867, again to April 1, 1868, and finally to April 1, 1871: *Held*, 1st, that section 17 of the act of August 26, 1842, chap. 202, applied to the contract; 2d, that the provision in the contract for its extension was unauthorized by law; and 3d, that the Postmaster-General may terminate the contract, on reasonable notice to the contractor, without reference to any failure on the part of the latter to perform it. Any extension of such a contract, unless for a period fixed as an alternative in the proposals, is unwarranted. *Opinion of Dec.* 4, 1869, 13 Op. 174.

62. The provisions of the acts of March 3, 1851, chap. 20, sec. 3, and August 31, 1852, chap. 113, sec. 88, imposing certain duties on the Postmaster-General relative to furnishing stamped envelopes, do not interfere with the general provision contained in the act of 1842, regulating the manner in which he shall provide such articles, viz, by advertisement for proposals and contract made in pursuance thereof. *Ibid.*

63. Where a contract is entered into with a land-grant railroad company for the transportation of troops or military supplies over its road at certain rates, the Quartermaster-General cannot, without such company's consent, make any deduction from those rates as a composition for the relinquishment of any right which the Government may have, under the conditions of the land-grant, to use the road itself for the purpose of transporting the troops and supplies "free from toll or other charge." *Opinion of May* 3, 1872, 14 Op. 592.

64. Where an alleged oral agreement between a quartermaster and the Danville, Lancaster and Nicholasville Turnpike Company, concerning the use of the road of the latter for military transportation during the late rebellion, was set up by said company as the basis of a rate of compensation above what had already been allowed by the Government for the use of the road: *Held* that, under the operation of the 1st section of the act of June 2, 1862, chap. 93, such agreement was not obligatory upon the Government, and could not be admitted as the foundation of a claim upon it. *Opinion of May* 5, 1873, 14 Op. 228.

65. In July, 1872, M. contracted to furnish all the dimension stone required for the custom-house building at Chicago, Ill., to be delivered at its site, and to be "of uniform color, free from flaws, stains, or discoloring matter." By a subsequent contract he agreed to cut such stone in such manner and at such place as might be required by the agent of the United States: *Held* (1) that the two contracts are not merged into one by the fact that M. is contractor in each; (2) that his obligations under the first contract are not affected by his engagement under the second, nor are his rights under the latter affected by the fact that he had furnished the stone upon which the work was to be done. *Opinion of Jan.* 17, 1876, 15 Op. 531.

66. The undertaking of M. in the first contract that the stone should be free from discoloring matter, stains, &c. (it being understood that such stone needed to be cut before being used), was in effect an undertaking that *when cut* the stone should be free from discoloring matter, stains, &c. *Ibid.*

67. Under the second contract he fulfills his obligation if he skillfully cuts the stone furnished by the United States, though it has only been provisionally accepted by the latter, and is not responsible for the stock. *Ibid.*

68. The exception contained in section 3732, Rev. Stat., in favor of contracts or purchases in the War and Navy Departments for clothing, subsistence, forage, fuel, &c., withdraws such contracts or purchases from the operation of the prohibition in section 3679, Rev. Stat. *Opinion of June* 19, 1876, 15 Op. 124.

69. *Held*, accordingly, that contracts and purchases in those Departments for clothing, subsistence, &c., may be made, though there is no appropriation adequate to their fulfillment, provided such contracts and purchases do not exceed the necessities of the current year. *Ibid.*

70. By act of March 3, 1871, chap. 113, section 2, Congress appropriated $500,000 for the construction, under the direction of the Secretary of State, of the south wing of a building designed for the accommodation of the State, War, and Navy Departments. Appropriations were subsequently made for continuing and completing that wing and also for the construction of other wings of the same building, the expenditure of the latter of these appropriations being placed under the direction of the Secretary of War. On the 16th of November, 1871, a contract, with the approval of the Sec-

retary of State, was made with O., by which the latter was to furnish from certain quarries and deliver at the site of the building all the granite required for the south wing, and also all the granite which might be required for the entire building or any additional part thereof, when the construction of the same should be authorized. The contractor, O., was also to furnish all the labor, tools, and materials necessary to cut, dress, and box at the quarries all the granite; in consideration of which he was to be paid the full cost of said labor, tools, and materials, together with the insurance on the granite, increased by 15 per centum of such cost: *Held* that the contract is not binding upon the United States as to the appropriations made subsequently to the act of March 3, 1871, except so far as it has been adopted and acted upon by those to whom the expenditure of such appropriations was confided, and that the present Secretary of War is not bound to adopt and carry it out as to appropriations intrusted to him. *Opinion of April* 27, 1877, 15 Op. 236.

71. The aforesaid contract with O., as regards the cutting and dressing of the stone, is not a contract for "personal services," within section 10 of the act of March 2, 1861, chap. 84. But in view of the action of Congress since its date and other circumstances (though not amounting to a ratification of the contract): *Advised* that, whatever may have been the irregularity in its inception by reason of insufficient advertisement, the Secretary of War is justified in proceeding with the contract as it now exists to the extent of the appropriations in his hands, or as it may be modified, should he deem it proper to do so. *Ibid.*

72. The contract made with C. P. Dixon, October 10, 1873, for granite, and for cutting and dressing the same, for the Philadelphia post-office building, is not obligatory upon the United States so far as it now remains executory and unperformed, and the Secretary of the Treasury need not proceed with it under the appropriations in his hands, unless he deems it for the interests of the Government to do so. *Opinion of May* 3, 1877, 15 Op. 254.

73. Advertisement for proposals having been made for the rough stone from the quarry, but not for the cutting and dressing of it, before letting the said contract: *Held* that the cutting and dressing were not within the exception of "personal services" in section 3709, Rev. Stat., and that such advertisement did not meet the requirements of said section as regards the contract actually entered into. *Ibid.*

74. The proposed modification of one of the contracts for furnishing and dressing stone, known as the "15 per cent. contracts," may be made, and the performance of the contract as modified proceeded with, without further advertisement, if the modification would render the contract less onerous upon the United States than it is in the form in which it was originally made. *Opinion of May* 17, 1877, 15 Op. 270.

75. In September, 1876, L. contracted to deliver beef cattle at the Pawnee and several other Indian agencies, and by article 5 of the contract "not over one-fourth at each delivery were to be cows." On February 5, 1877, said article was modified as follows: "In the requirements of three-fourths of each delivery to be steers and one-fourth cows, so that the restriction as to the proportion of steers and cows is removed, but for all cows delivered in excess of the one-fourth provided for in the contract a deduction of 6 per cent. shall be made from the net price of $3.56 per one hundred pounds at the Pawnee, and $3.73½ at the other agencies:" *Held* that under the modification the contractor is permitted to deliver cows in excess of one-fourth of the number of steers delivered, and that upon the cows delivered in excess of the one-fourth he is subjected to a deduction of 6 per cent., but that he is not entitled to full payment for one-fourth of all the cattle delivered where all the cattle delivered are cows. Thus, if he delivered one hundred cattle, of which three were steers and the rest cows, he would be entitled to receive on the three steers and one cow full payment, and on the remaining ninety-six cows he would be subjected to the 6 per cent. deduction. If the one hundred cattle delivered had been all cows, he would be subjected to the 6 per cent. deduction on the whole delivery. *Opinion of July* 15, 1878, 16 Op. 76.

76. A contract was made by the Subsistence Department with H. & B., by the terms of which the latter were to furnish 100,000 pounds of tobacco of a certain quality between August 20 and November 30, 1878, in such quantities as might be required; they further agreeing

"that if the Subsistence Department shall require more tobacco during the continuance of this contract and prior to the 30th of November, 1878, than the 100,000 pounds above stated, they will furnish, subject to the same conditions and at the same price, an additional 150,000 pounds, or any less amount, provided that due notice is given them prior to the 30th of November, 1878, aforesaid:" *Held* that, as to the additional quantity of 150,000 pounds, an option exists in favor of the Subsistence Department to receive such additional quantity or not; and that the Department is not, by the provisions in the contract above quoted, precluded from advertising for new proposals, and awarding a new contract for tobacco of a quality superior to that furnished by H. & B. under their contract. *Opinion of Oct.* 18, 1878, 16 Op. 184.

77. Under the provisions of the contract of Messrs. Coyle & Co. with the Commissioners of the District of Columbia to construct a sewer running from the Potomac River across the White Lot and then along the line of certain streets, &c., in Washington, D. C., the contractors are entitled to the surplus earth (excavated along the line of the sewer) which remains after the sewer is laid and the trench has been filled so as to restore the original level. *Opinion of Aug.* 1, 1879, 16 Op. 372.

II. Authority to make.—Parties.

78. A contract made by the proper officers of the Government with a person who, during the existence of the same, is elected a member of Congress, is not, under the act of April 21, 1808, chap. 48, affected by such election. *Opinion of Aug.* 9, 1809, 5 Op. 697.

79. It is competent for the Government to assent to the substitution of new parties to contract with the United States in order that the original stipulations may be carried out. *Opinion of Sept.* 20, 1821, 5 Op. 738.

80. But it is not competent for contractors to make transfers without the consent of the Government. *Ibid.*

81. Although the employment of members of Congress as assistant counsel to the district attorneys of the United States was not within the view of Congress at the passage of the act of 21st April, 1808, chap. 48, yet the language of the act is so broad as to include and forbid a contract for professional services in such a case. The policy of the law is to prevent the exercise of Executive influence over members of Congress by means of contracts; and whether the contract be for the services of a lawyer, physician, a mail-carrier, or a purveyor, it is equally within the mischief to be prevented. *Opinion of July* 18, 1826, 2 Op. 39.

82. All contracts and purchases entered into and made by the Navy Department must be entered into and made by or under the direction of the Secretary. *Opinion of Aug.* 2, 1829, 2 Op. 257.

83. The Secretary of the Navy, under the act of May 1, 1820, chap. 52, may contract for clothing and subsistence of the Navy; and when these supplies are to be furnished in places where there is no permanent agent, he must, of necessity, have the power to appoint a special agent to perform the duty. *Opinion of March* 10, 1830, 2 Op. 320.

84. The Norfolk Draw-Bridge Company has not the power to execute a contract or conveyance to the United States, except with the consent of the legislature of Virginia, expressed in a law, conferring the right to remove the bridge over the southern branch of Elizabeth River and to inclose the road leading thereto; nor can said company otherwise extinguish the rights of the public thereto. *Opinion of May* 16, 1832, 2 Op. 512.

85. By the act of February 8, 1815, chap. 38, which repeals all other acts coming within its purview, the colonel or senior officer of the Ordnance Department, under direction of the Secretary of War, may make contracts for the supply of ordnance without previously advertising for proposals. *Opinion of Nov.* 22, 1837, 3 Op. 293.

86. A partnership of which a member of Congress is a member cannot, under the act of April 21, 1808, chap. 48, enter into a contract with the Government; but, if he withdraw from it, the contract may be concluded with the other partners. *Opinion of June* 1, 1842, 4 Op. 47.

87. Contracts entered into by infants with the officers of the Government are voidable only at the instance of the infant himself, and not absolutely void. *Opinion of Sept.* 4, 1844, 4 Op. 334.

88. The contract of the Navy agent at New York with B. for piles for the dry-dock at Brooklyn, to be delivered after Congress should

make further appropriations, being in advance of any appropriation for such object, is contrary to section 6 of the act of 1st of May, 1820, chap. 52, and not binding on the Department. *Opinion of April* 25, 1846, 4 Op. 490.

89. Neither the Secretary of the Navy nor the head of any other Executive Department can lawfully contract for the United States, except under a law authorizing it or making an appropriation adequate to fulfill the engagement (section 6 of act of May 1, 1820, chap. 52). *Opinion of July* 12, 1847, 4 Op. 600.

90. Wherefore the Secretary of the Navy cannot lawfully contract for the construction of dry-docks at Kittery, Philadelphia, and Pensacola, and bind the Government to pay therefor an amount exceeding the appropriations already made for that object, as the same has not been specially authorized. *Ibid.*

91. But as the works for which the appropriations are made are important, and as it is expedient that the construction thereof should progress as far forth as may be practicable, the Secretary of the Navy may expend so much of the appropriation as may be necessary in purchasing sites and materials, with a view to their completion under the future direction of Congress. *Ibid.*

92. In general, where the Constitution or an act of Congress requires the President to do a thing which requires the expenditure of money, he may lawfully do it, or contract to have it done, in the absence of any adequate appropriation for the object; and the cost of the thing becomes a lawful charge on the Government. *Opinion of May* 6, 1853, 6 Op. 27.

93. Where, by the special provision for a particular work commenced and in progress, it was provided that nothing in the act should be so construed as to authorize any officer of the Government to bind the United States by contract beyond the amount of existing appropriation: *Held*, that if the public interest required the President to make a contract for the work exceeding such amount, he might lawfully do so, subject to the chance of future appropriations for the object, without which the contract would not bind the United States. *Ibid.*

94. A provision of statute empowered the Secretary of the Navy to make a contract on time for the supply of American water-rotted hemp, but the power was not executed. A subsequent provision contained appropriation for the object, but required purchase in open market: *Held*, that the latter provision so far repealed the former that a contract on time for this object, afterwards made by the Secretary of the Navy, was void for want of power. *Opinion of June* 3, 1853, 6 Op. 40; also *Opinion of Sept.* 5, 1853, *ibid.*, 99.

95. The Topographical Bureau, in charge of the pier and breakwater constructed by the United States for the improvement of the harbor of Cleveland, may lawfully enter into contract for the use of the same by railway companies. *Opinion of Oct.* 26, 1853, 6 Op. 199.

96. When a commissioned officer or other agent of the United States makes a contract with any person for their use and benefit, and with due authority of law, such officer or other public agent is not responsible to the party, whose only remedy is against the Government. *Opinion of April* 10, 1855, 7 Op. 88.

97. But in making contracts with any one claiming to act for the Government it is the duty of the party contracting to inquire as to the authority of such agent or officer; without which it is doubtful whether the contract affects the Government. *Ibid.*

98. If a public officer, however, make a Government contract without authority and which therefore does not bind the Government, such officer is himself personally responsible to the contracting party. *Ibid.*

99. But a public officer or other agent, though contracting for the Government, may, if he see fit, make himself the responsible party, either exclusively or in addition to the Government. *Ibid.*

100. By the act of May 1, 1820, chap. 52, the power of the Executive Departments is so limited that they can bind the Government by contract only in two cases: where the contract is expressly authorized by law, and where there is an appropriation already made large enough to fulfill it. *Opinion of April* 16, 1857, 9 Op. 18.

101. In the first place, there is an express power to contract for the work; in the second, there is an implied power to contract for so much work as the appropriation will pay for. *Ibid.*

102. If, therefore, Congress appropriates a certain sum to be expended by the Secretary of War for the improvement of a river, the Secretary exceeds his power when he makes a con-

tract for more work than the appropriation will pay. *Ibid.*

103. In such case, after the appropriation is exhausted, the contract is at an end. *Ibid.*

104. If another appropriation is made, there must be a new contract for its expenditure. *Ibid.*

105. The act of May 1, 1820, chap. 52, section 6, absolutely prohibits the making of a contract by the Secretary of the Treasury, unless a law or an appropriation authorizes it. *Opinion of May* 13, 1861, 10 Op. 41.

106. The acceptances by Mr. Floyd, Secretary of War, of the drafts drawn upon him by Russell, Majors & Waddell, and held by Pierce & Bacon, are not legal contracts of the Government, and the United States are not legally bound to pay any money on account thereof. *Opinion of June* 20, 1862, 10 Op. 288.

107. The question whether the United States are equitably bound to pay those drafts is not for the consideration of the Attorney-General, but for the determination of the judiciary and of Congress. *Ibid.*

108. The Secretary of War is advised not to enter into a proposed agreement with the Moline Water-Power Company, at Rock Island, without authority of Congress. *Opinion of March* 1, 1867, 12 Op. 120.

109. Under the joint resolution of June 21, 1870, the Secretary of the Treasury has power to enter into contracts for the recovery of real estate alleged to have been conveyed to the so-called Confederate States, but which is now in the occupancy of private individuals. *Opinion of April* 11, 1870, 13 Op. 569.

110. In such contracts the Secretary may stipulate to allow as compensation for the service a portion of the proceeds realized from the property recovered. *Ibid.*

111. No person can make a valid contract in behalf of the United States unless expressly or impliedly authorized by statute so to do; but, if so authorized, the right to make such contract is not necessarily limited to contracts with persons who are not enemies of the United States. *Opinion of Sept.* 2, 1870, 13 Op. 315.

112. Whether the right to make the contract is a right to make it with an enemy depends upon the true construction of the statutes authorizing the making of the contract, and not upon any general principles of public law. *Ibid.*

113. An express contract made in behalf of the United States, during the rebellion, with a citizen and resident of an insurrectionary State, for quartermaster's supplies, if the officer making it acted under competent authority, is valid. The settlement of a claim arising under such a contract is not barred by the acts of July 4, 1864, chap. 240, and February 21, 1867, chap. 57. *Ibid.*

114. Review of the statutes relative to the making of contracts in behalf of the United States for quartermaster's stores down to and including the act of July 4, 1864, chap. 253; from which it appears that, under the law as it stood after the passage of that act, Congress has not authorized purchases or contracts for such stores to be made except in the following manner: 1. By or under the direction of the chief officer of the Department of War (act of July 16, 1798, chap. 85). 2. By the officers of the Quartermaster's Department, under the direction of the Secretary of War (acts of March 28, 1812, chap. 46, and August 23, 1842, chap. 186), or under the direction of the Quartermaster-General, or, in cases of emergency, by the chief quartermaster of an army or detachment under the order of the commanding officer (act of July 4, 1864, chap. 253). 3. All contracts to be made after previous advertisement for proposals respecting the same, except in cases of emergency (act of July 4, 1864, chap. 253). *Ibid.*

115. The 170th section of the act of June 8, 1872, chap. 335, authorizing the Postmaster-General to furnish and issue to the public postal cards, does not empower him to enter into any contract for the future payment of money to persons supplying them, in the absence of any appropriation by Congress which is applicable to the subject. *Opinion of Aug.* 23, 1872, 14 Op. 107.

116. A collector of customs is under no disability, by reason of his office, to contract with the Government for carrying the mail in steamboats between two or more ports within the United States. *Opinion of April* 22, 1874, 14 Op. 389.

117. Sections 1781 and 1782 of the Revised Statutes make it illegal for an officer of the United States to have that sort of connection with a Government contract which an agent, attorney, or solicitor assumes when he procures, or aids in procuring, such contract for

another, or when he prosecutes for another any claim against the Government founded thereon. *Opinion of Oct.* 29, 1874, 14 Op. 483.

118. But there is in the statutes no general provision whereby officers of the executive branch of the Government are forbidden to contract directly with the Government as principals, in matters separate from their offices and in no way connected with the performance of their official duties; nor are those officers forbidden to be connected with such contracts, after they are procured, by acquiring an interest therein. *Ibid.*

119. There is no prohibition against pension agents contracting directly with the Government, or becoming connected with Government contracts, in the manner just adverted to. *Ibid.*

120. To be "authorized by law," within the meaning of section 10 of the act of March 2, 1861, chap. 84 (section 3732 Rev. Stat.), a contract must appear to have been made either in pursuance of express authority given by statute, or of authority necessarily inferable from some duty imposed upon, or from some power given to, the person assuming to contract on behalf of the Government. *Opinion of April* 27, 1877, 15 Op. 236.

121. Authority to contract for the completion of an entire structure, the plan of which has been determined on, cannot be inferred from the mere fact that an appropriation of a certain sum to be expended on the structure has been made. Hence a contract, though it might be good to the extent of such appropriation, could not be made to affix itself to future appropriations and control their expenditure. A contract of this character would be in violation of the spirit of section 3, act of July 25, 1868, chap. 233 (section 3733 Rev. Stat.), if not of its express terms. *Ibid.*

III. Advertisement.—Proposals.—Bidders, &c.

122. In purchases or contracts made by the Navy Department, where the public exigencies do not require the immediate delivery of the articles, or performance of the service, it is necessary to advertise previously for proposals respecting the same. *Opinion of Aug.* 29, 1829, 2 Op. 257.

123. Where immediate delivery is necessary to the wants of the public service, the article required must be obtained by open purchase, *i. e.*, at places where articles of the description wanted are usually bought and sold, and in the mode in which purchases are ordinarily made between individuals. *Ibid.*

124. In contracts with the Navy Department, where the public exigencies do not require the immediate delivery of the article purchased, or the performance of the service contracted for, it is necessary to previously advertise for proposals respecting the same; unless the article be a steamboat or some similar structure. *Opinion of March* 25, 1839, 3 Op. 437.

125. Where immediate delivery is necessary to the wants of the public service, the article required must be obtained by open purchase. *Ibid.*

126. Since the act of March 3, 1843, chap. 83, the Secretary of the Navy is not authorized to renew a contract which has expired, without advertising, as is required by the first section of that act; nor is it competent for the Department to pay to the contractors, upon forfeited contracts, the 10 per cent. reserved as collateral security, whether the same has been reserved on original or renewed contracts. *Opinion of Nov.* 11, 1843, 4 Op. 283.

127. The Navy Department has not the right, under the act of March 3, 1843, chap. 83, in awarding the contract to the lowest bidder, to modify its terms in regard to the time of delivery, or any other of its material elements. *Opinion of Sept.* 24, 1844, 4 Op. 334.

128. The Secretary of the Navy, in contracting for water-rotted hemp for the use of the Navy, is restricted, in the manner of purchase, by the act of March 3, 1843, chap. 83, which requires him to advertise for the articles, to receive bids, and to award the contract for it to the lowest bidder. *Opinion of April* 1, 1846, 4 Op. 475.

129. Purchases in open market cannot be resorted to, except in cases of, and in reference to, such articles as are wanted for use so immediate as not to permit of contracts by advertisement. *Ibid.*

130. The joint resolution of Congress of May 9, 1848, providing the manner of obtaining American water-rotted hemp for the use of the Navy, and the advertisement of the Secretary of the Navy pursuant thereto, alike require proposals to be submitted, which shall state the

price at which the bidder will furnish the stipulated quantity per year for the entire five years. *Opinion of Sept.* 25, 1849, 5 Op. 158.

131. Bidders who propose different prices for different years, and reducing the price for the last year to occasion a lower average than the bids of competitors, might, if their contracts were accepted, have opportunities for the exercise of bad faith with the Government, which a different method of contracting might prevent. *Ibid.*

132. If, however, such bids shall be accepted, the lowest bids should be charged with the interest of the excess of bids over other competitors for the years where there may be an excess, and the average be struck from the aggregate found. *Ibid.*

133. The import and intent of the act of March 3, 1851, chap. 34, in relation to the floating dry-dock in California, is, that if the individuals who were parties to the original contract are willing to enter into a contract modified as required by the act, and will agree to do the work at the estimates made by the Navy Department, and if the Secretary considers those estimates to be fair and reasonable, then the Secretary is required to close the contract upon the terms specified; and, in that case, it will not be necessary to advertise. *Opinion of March* 24, 1851, 5 Op. 311.

134. But if either the designated contractors shall refuse to agree to do the work at the estimates referred to, or if the Secretary shall consider those estimates as unfair or unreasonable, the subject is to be thrown open to the competition of bidders by an advertised notice of sixty days. *Ibid.*

135. The law requires that executory contracts for supplies and materials for the Departments shall be duly advertised. *Opinion of Sept.* 5, 1853, 6 Op. 99.

136. A head of Department, advertising according to law for proposals for stationery, is the competent and only judge of the matters of fact involved in the acceptance or rejection of any of the proposals. *Opinion of Nov.* 23, 1853, 6 Op. 226.

137. In a matter which the law confides to the pure discretion of the Executive, the decision by the President, or proper head of Department, of any question of fact involved, is conclusive, and is not subject to revision by any other authority in the United States. *Ibid.*

138. *Semble*, if the provisions of law which require certain contracts to be advertised are disregarded, that the contracts, while they remain executory, and without commencement of performance, are subject to be rescinded. *Opinion of March* 24, 1854, 6 Op. 406.

139. Where an advertisement for proposals to furnish coal for the use of the Navy Department announced that "the price stated must be for the coal delivered on board vessels in the port of Philadelphia," a party whose proposal was accepted is not bound to sign a contract binding him to deliver the coal "on board of such vessels, or *in such places*, in the port of Philadelphia, as the Department may name or indicate," although the advertisement further declared that "it will be stipulated in the contract that if default be made in delivering the coal at the place and time directed by the Department, then and in that case the contractor," etc., "will forfeit and pay," etc. *Opinion of July* 16, 1859, 9 Op. 371.

140. In the execution of a statute authorizing the President to erect a court-house in the city of Baltimore, it was held to be the duty of the President to invite general competition for the contract by an advertisement to be published for at least sixty days, under the provision in the act of August 31, 1852, chap. 108, requiring all contracts to be advertised for that length of time before letting. *Opinion of Jan.* 17, 1860, 9 Op. 407.

141. The Secretary of War authorized a contract with an individual to be executed for rifling one-half of the guns or cannon at the forts and arsenals of the United States, and the contract was made without any advertisements for proposals respecting the service. It appeared that the execution of the contract would involve an expenditure of nearly $200,000, and would require several years for its fulfillment. The contract was made before the passage of the act of March 2, 1861, chap. 84: *Held* that the contract was made in violation of the provision of section 3 of the act of June 23, 1860, chap. 205, requiring all contracts for supplies or services in any of the Departments, when the public exigencies do not require the immediate delivery of the articles or performance of the service, to be made by advertising for proposals respecting the same. *Opinion of April* 29, 1861, 10 Op. 28.

142. The only part of section 3 of said act of

June 23, 1860, which has ceased to be law since the passage of the act of February 21, 1861, chap. 49 (section 5), and said act of March 2, 1861 (section 10), is that part which refers to the purchase of patented inventions. *Ibid.*

143. Where the Secretary of the Navy has advertised for proposals to furnish naval supplies, under the provisions of the acts of March 3, 1843, chap. 83, and August 10, 1846, chap. 176, he may consider the proposal of the lowest bidder, where the bid is in substantial compliance with the law, although it names a time for the completion of the contract five days beyond that fixed in the advertisement. *Opinion of Oct.* 7, 1861, 10 Op. 140.

144. A contract for surveying the reservations, under the treaty with the Pottawatomie Indians, of April 15, 1862, is a contract for "personal services," and therefore may be made without previous advertisement for proposals under the tenth section of the act of March 2, 1861, chap. 84. *Opinion of May* 23, 1862, 10 Op. 261.

145. It is a sufficient objection to a naked unexecuted contract, made by an officer of the Government, that he has neglected to comply with an act of Congress requiring that proposals shall precede the letting of the contract. *Opinion of Dec.* 24, 1862, 10 Op. 416.

146. But after a party has entered into a contract with the Government in good faith, and has so far performed his part of the same that to rescind it, or declare it illegal, and so incapable of execution, would subject him to loss and injury, whilst the Government would yet enjoy the benefits of his labor or expenditures, the contract cannot be avoided, or changed to the injury of the other party, by the Government, on the ground that it was made without advertising for proposals. *Ibid.*

147. Where the engineer in charge, being required by law to invite proposals by circulars and advertisement for furnishing pipes for a water-main from the Washington Aqueduct in the District of Columbia, and to give the contract to the lowest responsible bidder, issued instructions stating that "no bid will be considered which does not comply with" certain directions, and the lowest bid afterward received failed to comply with those directions in material points: *Held*, that the bid cannot be considered. *Opinion of Aug.* 23, 1871, 13 Op. 510.

148. When the law under which the engineer acts authorizes him to solicit bids by circular, &c., and then requires the contract to be given to the lowest responsible bidder, it must be construed to mean that the lowest responsible bidder who conforms to the terms prescribed in the circular shall have the contract. *Ibid.*

149. Where proposals were received by the Chief Signal Officer from different parties to supply certain manifold forms, at rates greatly varying in amount, and that officer, before awarding the contract, was notified by the party making the highest bid that the manufacture of the manifold forms is covered by a patent owned by himself, and that no other bidder could supply them without infringing his patent—some of the other bidders, however, denying the validity of the patent, and claiming that they are not thereby precluded from supplying the article: *Advised* that, under the circumstances presented, the contract should not be given to the lowest or any other bidder, if the article to be supplied is covered by the terms of a patent, unless the Chief Signal Officer is satisfied that the bidder has authority from the patentee to manufacture and sell it. *Opinion of July* 23, 1875, 15 Op. 26.

150. In July, 1872, the Commissioner of Patents, without previous advertisement, contracted with P. to furnish certain photolithographic copies of patent drawings of date anterior to July 1, 1870, and of such other dates as the Commissioner might designate, the contract (which was subsequently modified) to run until July 1, 1875. Appropriations were made for continuing the work in 1873, 1874, and 1875. On the 27th of March, 1875, the Commissioner (without advertising) and P. extended the contract so as to cover so much of the appropriation of $100,000 made by the act of March 3, 1875, chap. 129, for producing copies of drawings of current and back issues, as should be used for producing such copies by photolithographing. P. thereupon made, in good faith, large expenditures to enable him to execute the contract thus extended. The Joint Congressional Committee on Printing were consulted with reference to the original contract and also the extension, and approved both: *Held* that the contract of March 27, 1875

(extension of original contract), having been made without due advertisement, is not valid and binding upon the Government; and that the fact that the contractor made, in good faith, expenditures to enable him to perform the same does not give it validity. *Opinion of March* 20, 1876, 15 Op. 539.

151. An officer who, in giving out a contract, has failed to comply with the statutory provision requiring advertisement previous to letting the contract, cannot, by permitting performance thereunder to proceed to any extent, make such contract obligatory upon the Government. *Ibid.*

152. Opinion of Attorney-General Bates (10 Op. 416) that, although a statute containing that requirement has been disregarded, yet if the contract has been partially performed it cannot be deemed void, but must be executed according to its terms, disapproved. The present case, however, distinguished from the one there considered. *Ibid.*

153. Sections 490, 491, and 492 Rev. Stat. do not apply to and regulate the production of back issues described in the contract of July, 1872, as of date anterior to July 1, 1870. The authority to make contracts for the work provided for by the appropriation of March 3, 1875, is vested in the Commissioner of Patents. *Ibid.*

154. The Committee on Printing have, by section 492 Rev. Stat., no power to waive an advertisement, except in case of an exigency of the public service. Such power is not implied in their power to prescribe rules for the action of the Commissioner of Patents. *Ibid.*

155. An advertisement for proposals (under section 3709 Rev. Stat.) for furnishing the Post-Office Department with postage stamps may, in the discretion of the Postmaster-General, be limited to "steel-plate engravers and plate printers;" the purpose of the limitation being to confine the submission of proposals to such persons only as can satisfactorily furnish the articles needed. *Opinion of April* 17, 1877, 15 Op. 226.

156. Where the advertisement requires the proposals to be made on blank forms furnished by the Department, the omission or erasure of immaterial words in the proposal of a bidder does not affect the validity of his bid. *Ibid.*

157. An award of contract, by the issuance of an order of the Postmaster-General in the usual way and its transmittal to the bidder, thus indicating the acceptance of his proposal, is sufficient, and, when received by the latter, the award thus made is beyond recall, and the agreement is complete and binding upon the Government. It makes no difference in such case that a more formal contract was contemplated to be entered into, but has not been executed by the bidder, if the failure be not attributable to his default. *Ibid.*

158. *Quære*, whether the provision in section 10 of the act of March 2, 1861, chap. 84, for the advertisement of purchases and contracts is directory merely, or whether the failure to make such advertisement avoids the contract. *Opinion of April* 27, 1877, 15 Op. 236.

159. Under the act of August 14, 1876, chap. 267, advertisement was made for proposals to build certain locks on the Muscle Shoals Canal. Proposals having been received from several bidders in response thereto, these were opened May 15, 1877, when it appeared that S. was the lowest bidder. Afterwards, on the same day, a telegram was received from him withdrawing his bid; and again, on the 18th of June, his bid was withdrawn by letter. On the 27th of July, S. was formally notified that the contract for building the locks had been awarded to him, but he, by letter dated July 30, declined to enter into it: *Held* that S. had a *locus pœnitentiæ* until *acceptance* of his bid, during which period he was at liberty to withdraw it; and that, the withdrawal of his bid having taken place prior to its acceptance, neither he nor his sureties are liable upon the guaranty which accompanied the bid. Section 3944 Rev. Stat. has no application to this case. *Held*, further, that the other bidders are not released, and that the contract may be awarded to the one whose bid is lowest. *Opinion of Aug.* 28, 1877, 15 Op. 649.

IV. Condition.

160. The Secretary of the Treasury purchased the site of a custom-house at Ogdensburg; but, under the erroneous impression that the duties were less than the expenses, inserted in the contract a condition that the contract should be void unless Congress should afterwards legalize it: *Held* that, inasmuch as no act of Congress was necessary to legalize it, the contract was binding as it stood and the

condition nugatory. *Opinion of Aug.* 27, 1857, 9 Op. 77.

161. A letter from the Secretary of the Treasury, notifying him of the intention of the Government to accept the property and consummate the contract when the legal difficulty erroneously supposed to exist should be removed, is to be construed as an unconditional acceptance. *Ibid.*

V. Assignment of.—Annulment.

162. Contractors with the Government may transfer with the assent of Government, and when such transfers are made and assented to the assignees take the place of the original party. *Opinion of Jan.* 24, 1823, 5 Op. 747.

163. A contract with the Government is not assignable. *A fortiori* an assignee, under an invalid contract, has no claim upon the United States. *Opinion of Dec.* 27, 1851, 5 Op. 502.

164. On a contract between the United States and A. G. Sloo, which contract is now performed by the co-assignees of said Sloo: *Held* that the United States may pay for the mail service under said contract and assignment to any two of the co-assignees. *Opinion of April* 8, 1856, 7 Op. 676.

165. The contracts of Russell, Majors & Waddell, for transportation of Army supplies, are not assignable without the approval of the Secretary of War. *Opinion of Feb.* 21, 1861, 10 Op. 4.

166. A contract transferred by the parties in violation of the fourteenth section of the act of July 17, 1862, chap. 200, is absolutely annulled so far as the United States are concerned. *Opinion of Sept.* 23, 1863, 10 Op. 523.

167. Where a person contracted with the United States to remove certain rock from the harbor of San Francisco, and whilst engaged in the work was enjoined by a court of the State from receiving an installment of pay due thereupon, whereby he was hindered from going on with the contract: *Held* that process issued under the authority of a State cannot legally obstruct, directly or indirectly, the operations of the United States Government; yet *advised*, under the circumstances here presented, that the contract be declared forfeited. *Opinion of Jan.* 3, 1876, 15 Opin. 524.

168. O. having given a power of attorney to S., coupled with an interest in the performance of the contract, by which power S. was to sign and receipt for all moneys due under the contract: *Held* that this was a transfer of the contract within section 14 of the act of July 17, 1862, chap. 200; yet that, although the Government may avail itself of such transfer to annul the contract under the provisions of that section, it is not compelled to do so. *Opinion of April* 27, 1877, 15 Op. 236.

169. S., having a contract with the Engineer Department for dredging in the Occoquan River, by the terms of which the compensation named therein was to be paid to him from time to time, gave to I. a power of attorney (declared in the instrument to be irrevocable) "to demand, receive, and receipt for, to the proper disbursing officer of the United States, all moneys, warrants, drafts, vouchers, and checks that may become due and payable to me (S.) from the United States for work," &c.: *Held* that the instrument does not amount to a transfer of an interest in the contract so as to authorize the annulment thereof under section 3737 Rev. Stat. *Opinion of Feb.* 7, 1879, 16 Op, 261.

170. S., having a contract with the Engineer Department to perform certain dredging, entered into an agreement with G., by which it was stipulated that S. should furnish two-thirds and G. one-third of the money, material, or labor necessary for the execution of the contract; that in case of loss by reason of such execution the loss should be borne in the proportion of two-thirds thereof by S. and one-third by G., and that the net proceeds should be divided between them in the same proportion: *Held* that such agreement is an assignment of an interest in the contract, and falls within the provision of section 3737 Rev. Stat., declaring that "no contract or order, or any interest therein, shall be transferred by the party to whom such contract or order is given to any other party," &c. *Opinion of March* 7, 1879, 16 Op. 278.

171. That provision is intended only for the protection of the United States. The Government may avail itself of the assignment or transfer to annul the contract, but is not compelled so to do. (Reaffirming opinion on this subject, of April 27, 1877—see 15 Op. 236.) *Ibid.*

VI. Error.—Rescission.—Forfeiture.—Damages.

172. The Secretary of War may declare the contract with Hawkins, for the completion of the public works at Mobile, forfeited, and prosecute for a breach of it. *Opinion of Oct.* 27, 1821, 5 Op. 742.

173. Where a contractor with the Government to deliver a certain quantity of timber by a time specified failed in respect to time, and suffered a forfeiture of ten per cent. thereby, which the Fourth Auditor and Second Comptroller retained from his account, it cannot be refunded to him except by authority of Congress. *Opinion of Dec.* 14, 1831, 2 Op. 481.

174. When such contracts have been made the rights of the parties under them become at once vested, and it is not in the power of the agents to modify or release them. *Ibid.*

175. In settling the accounts and ascertaining the balance, the accounting officers must be guided by the instrument itself. Neither the Auditor nor the Comptroller can absolve contractors from any of the stipulations contained in their contracts, however severely they may be supposed to bear upon them. *Ibid.*

176. Neglect of the officers and agents of Government to give a contractor for rations, to be furnished the Creek Indians, due notice of an unexpected large number of them to be removed, and supplied with rations at an unseasonable period of the year, is sufficient to excuse the non-performance of the contract, and to protect the contractor from damages. Payment for rations furnished before the contract was abandoned by the contractor ought not to be withheld by the Government on account of such non-performance. *Opinion of June* 8, 1841, 3 Op. 633.

177. An admitted clerical error in a contractor's bond should not operate to his prejudice. *Opinion of May* 11, 1852, 5 Op. 547.

178. A special provision of law (in act of Aug. 31, 1852, chap. 108) enacted that "all contracts now existing" in relation to a given object, "not made according to law, are hereby canceled": *Held* that under this law the President is to judge whether such contracts were made "not according to law"; that the law does not determine this point; and, *quære* whether it could be determined by act of Congress. *Opinion of May* 6, 1853, 6 Op. 27.

179. In case a contract for services be rescinded by the United States, without malfeasance by the other party, and after the services have been partly performed by him if he claim unliquidated damages as for breach of contract, the case is beyond the powers of the accounting officers of the Treasury; but if he waive all other claims, and elect to take payment as for part performance in discharge of the contract, it is a mere question of account to be passed by the proper Auditor and Comptroller. *Opinion of June* 1, 1854, 6 Op. 496.

180. In the case of a contract with the Government rescinded for lawful cause, but without fault on the part of the contractor, the latter has no right to vindictive damages, or to any collateral or consequential damages; nor is he entitled to damages in the rate of the contract as if completely performed by him; but the true measure of damages, whether in equity or law, is the actual value of the contract *per se*, and the actual loss of its non-performance. *Opinion of June* 7, 1854, 6 Op. 516.

181. Damages on the rescission of a mail contract by the Postmaster-General cannot be allowed beyond the actual loss to the party. *Opinion of June* 19, 1855, 7 Op. 286.

182. In the case of a post-office contract, canceled by the Postmaster-General, it is in the option of the other party to take the one month's extra allowance provided by the contract, or to claim damages at large; but if he elect to accept the former, that is a legal waiver of the latter. *Opinion of Sept.* 8, 1855, 7 Op. 487.

183. Where a mail steamship company was bound by law, out of sums of money coming due to it from the Government for mail service, to refund, with interest, certain advances made to the company, and by reason of the failure of Congress to make appropriations for the service, the Government was in default to the company: *Held* that the latter was not bound to pay interest during the period of such default. *Opinion of Sept.* 27, 1855, 7 Op. 535.

184. The acceptance by a mail contractor, on the rescission of his contract by the Postmaster-General, of the month's extra compensation stipulated for such case in the contract,

is a waiver of all claim for other damages. *Opinion of March* 3, 1856, 7 Op. 644.

185. Where the claim of a mail contractor is referred by an act of Congress to the Comptroller of the Treasury for an adjustment of the damages which he alleges have been occasioned by the abrogation of the contract, the Postmaster-General has a right to be heard before the Comptroller in vindication of the acts of his Department. *Opinion of April* 7, 1857, 9 Op. 11.

186. Having such right to be heard the Postmaster-General may take the advice of the Attorney-General upon any question of law involved in the case. *Ibid.*

187. Where an act of Congress requires the Comptroller to adjust the damages due on account of the abrogation of a contract, those words do not require him to regard the contract as having been abrogated or violated, when in point of fact it was faithfully kept, and all its conditions performed by the Post-Office Department. *Ibid.*

188. Such a law authorizes the Comptroller to award damages exclusively for the abrogation of the contract, and if it never was abrogated no damages at all can be allowed. *Ibid.*

189. Where the Secretary of the Treasury has made a contract for the site of a courthouse, and afterwards refused to take the property for a supposed defect of title, the contract is at an end. *Opinion of Sept.* 26, 1857, 9 Op. 100.

190. A succeeding Secretary cannot reconsider the subject, unless upon the discovery of new evidence not produced to his predecessor, nor known to the party at the time of the first decision. *Ibid.*

191. The fact that the former Secretary made his decision immediately previous to his retiring from office will not take the case out of the general rule, or make his determination less binding. *Ibid.*

192. Where, by a contract to deliver iron pipes to the Government, it was stipulated that the delivery should be completed on March 1, 1858; that 10 per cent. of the price should be retained until the completion of the contract, and that the Government might at any time, for delay or non-compliance with the agreement, declare it forfeited, it was held that the failure of the contractors to deliver all the pipes by the time indicated did not work a forfeiture of the money reserved, when the Government continued to receive the pipes after the time limited for the completion of the delivery. *Opinion of Oct.* 25, 1858, 9 Op. 210.

193. Damages for the violation of a contract ought to be such as put the injured party in as good a condition as if the covenant had been kept by the other. *Opinion of July* 20, 1860, 9 Op. 450.

194. The measure of damages in the case of a contract of which the party was deprived by the Government is the profits which the contractor would have derived naturally, directly, and immediately out of the contract itself, had it been fully performed by him. *Ibid.*

195. Where a contractor bound himself to deliver grain at or near Camp Floyd, as might be desired, between July 1, 1859, and June 1, 1860, and after the delivery of a portion of the grain, the deputy quartermaster-general refused to receive the remainder within the time specified, it was *held* that such refusal was a breach of the contract on the part of the Government, for which the contractor might claim damages. But the contractor and the deputy quartermaster-general having agreed to extend the time for the delivery of the grain to the 30th of June, 1861, it was *advised* that the Secretary of War might permit the execution of the agreement as extended. *Opinion of Nov.* 24, 1860, 9 Op. 510.

196. Where a contractor had entered into two contracts with the Navy Department, and had fulfilled one of them but failed to perform the other: *Held* that the Department, in settling with him, might lawfully deduct from the moneys due on the first or executed contract the amount of the forfeiture stipulated to be paid in the second contract in the event of a failure on the part of the contractor to perform it. *Opinion of Oct.* 25, 1864, 11 Op. 120.

197. But where moneys were due to several joint contractors, *held* that the Navy Department could not deduct from those moneys the amount of the forfeiture due to the United States under an unfulfilled contract between the Government and one of the said joint contractors. *Ibid.*

198. The Secretary of the Navy may waive a forfeiture stipulated in a contract with his Department, in a case of good faith, where the forfeiture occurred through misfortune. *Opinion of Feb.* 5, 1867, 12 Op. 112.

199. A contractor with the War Department agreed to complete a certain work within a definite time, and in default thereof to forfeit $50 a day during each and every day's delay thereafter in its completion; the amount thus forfeited "to be deducted from the amount which may be due * * * on the final completion of the work, as liquidated damages." The work was not completed by the time fixed, but it was faithfully performed, agreeably to the specifications of the contract, and the Government sustained no damage whatsoever in consequence of the delay: *Held* that the *per diem* forfeiture, according to the intention of the parties here (which is to be ascertained from a view of the whole contract, the use of the words "liquidated damages" not being, in itself, conclusive of such intention), must be regarded as a penalty, the object of which was to secure the Government against actual loss or damage arising from delay in the completion of the work. *Opinion of Dec.* 20, 1877, 15 Op. 418.

200. The work having been completed, and no damage sustained by the delay, the conditions necessary to warrant the exaction of the penalty do not exist, and the Department is accordingly at liberty to relieve the contractor therefrom. *Ibid.*

VII. Release of Contractor.

201. The Secretary of the Treasury has no legal authority to relieve a contractor on the Washington Aqueduct from a bad bargain, either by rescinding the contract or by paying him a higher price for his labor than what he agreed to take. *Opinion of Sept.* 5, 1857, 9 Op. 81.

202. The power vested in the head of an executive department to make contracts for work or materials does not imply the power to rescind or alter such contracts when made. *Ibid.*

203. The second contract between the United States and Dakin, Moody, and others, relative to the construction of a dry-dock in the Bay of San Francisco, does not release the contractors from the covenant contained in the first contract to complete the work and deliver it within two years from its date. *Opinion of May* 5, 1832, 10 Op. 245.

204. The Secretary of the Navy has not power, under the circumstances stated, to release a contractor from his undertaking to furnish (among other enumerated articles) "a saw, futtock, for boat-builders' use, Knowlton's patent," to the several navy-yards. The effect of such release would be to give the contract to the highest bidder as to all supplies furnished under it. *Opinion of April* 12, 1878, 15 Op. 481.

VIII. Payment.

205. The terms of the specific appropriation of the act of March 3, 1829, chap. 51, control the general provisions of the act of January 31, 1823, chap. 9, concerning the disbursements of public money, so that the President may fulfill the contract of the late President with Persico. *Opinion of March* 13, 1829, 2 Op. 197.

206. Contracts for bricks and masonry at Fort Monroe ought to have been deposited with the Comptroller, and accounts arising therefrom ought to be adjusted at the Treasury Department; until that shall be done, the Secretary of War cannot be called on to order payment. *Opinion of May* 31, 1832, 2 Op. 518.

207. The contractor for parchments for land patents delivered a portion of them in printed form, and received payment therefor, augmented by the price of the printing. *Held* that the amount thus erroneously paid may be deducted from other sums yet due him. *Opinion of May* 20, 1840, 3 Op. 539.

208. The contractors for the printing of parchments cannot be paid for such printing; nor are they entitled to the amount thus overpaid to the contractor for parchment. *Ibid.*

209. Contractors for the removal of the Chickasaws to their new homes must be paid from the appropriation of the Chickasaw fund, made by the act of the 20th of April, 1836, chap. 53, even though some of the Indians did not avail themselves of the means furnished to remove them. *Opinion of July* 2, 1840, 3 Op. 561.

210. The provision of the act of March 3, 1855, chap. 201, allowing additional compensation to Giddings on a mail contract, does not require payment to him individually unless due to him; it is additional on the contract only so far as performed. *Opinion of Jan.* 16, 1856, 7 Op. 617.

211. That addition does not affect any previous contract with other parties on the same

route. They are to be paid according to the general law. *Ibid.*

212. The Secretary of the Navy cannot properly pay the moneys due upon the contracts of the United States with the Stover Machine Works to either of the claimants thereof, Stover or Cheever. *Opinion of Feb.* 19, 1868, 12 Op. 370.

213. The facts stated in the case submitted showing that a certain sum was due to a mail-contractor under his contract which, by mistake and misapprehension, the Department has paid to another: *Advised* that the contractor, notwithstanding such payment, is entitled to the money due under his contract, and accordingly that, if there is any fund in the hands of the Postmaster-General available for the purpose, the latter should pay it. *Opinion of May* 5, 1870, 13 Op. 226.

214. If, however, the case, upon the same state of facts, has already been considered and finally decided by any of that officer's predecessors, it would fall within the principle that the final decision of a case before a head of Department is binding upon his successors in the same Department. *Ibid.*

215. The Biddle Manufacturing Company contracted with the Government to manufacture a gun, payment therefor to be made in installments as the work progressed, and afterward subcontracted with the South Boston Company for the performance of the work; the latter also to be paid by installments as the work progressed. The former company was in fact an individual only, who subsequently became insolvent and against whom a petition in bankruptcy was then filed. An installment is due from the Government to the Biddle Company, and likewise one from the latter to the Boston Company, this last debt being a lien on the gun. *Advised* that payment to the Biddle Company be reserved until the questions before the bankruptcy court on said petition are determined; but that the Government can safely and with propriety discharge any lien which has arisen or which may arise in favor of the Boston Company in connection with the fabrication of the gun, until its completion. *Opinion of July* 27, 1874, 14 Op. 424.

CONVEYANCE.

See DEED; GRANT TO THE UNITED STATES.

COOLIES.

The coolie trade is not within the acts of Congress prohibiting the slave trade. *Opinion of March* 11, 1859, 9 Op. 282.

COPYRIGHT.

1. A copy of a book may be deposited with the Secretary of State after six months from the time of its publication, if not done before, and it will avail from the time of such deposit. *Opinion of Jan.* 15, 1822, 1 Op. 532.

2. An artist, employed by the United States to engrave a chart prepared by an officer of the Army, has no pretense of right of copy in the engraved plates or impressions. *Opinion of March* 14, 1856, 7 Op. 656.

CORPORATIONS.

See also NATIONAL BANKING ASSOCIATIONS; PACIFIC RAILROADS; UNITED STATES BANK.

1. Judgments by default against corporate bodies are regulated by the practice of the several States in such cases. *Opinion of Jan.* 15, 1819, 1 Op. 258.

2. The provisions in the act of Congress relative to public debtors do not reach the case of corporate bodies. *Ibid.*

3. It is not competent for a bank with an ordinary charter to set apart by deed, not under seal, lands, so as to exempt them from execution for the debts of the bank. The principle that a corporation can grant only by its seal is of universal application, and applies as well to the case of a grant to the United States as to an individual. *Opinion of Oct.* 2, 1822, 1 Op. 572.

4. A legal quorum of the trustees of Columbia College being present for the transaction of business, and it being announced in order to proceed to the election to fill a vacancy in the board, and the majority of the quorum voting for an individual who was thereupon declared elected, the election is valid. *Opinion of Jan.* 29, 1827, 2 Op. 46.

5. The resolutions of the Bank of Vincennes, by which the debtors of the bank were permitted to discharge their debts by a transfer

of the stock of the bank, render such transfers a nullity, and leave such debts still due, and a part of the fund to which the creditors of the bank have yet a right to look for satisfaction of their claims. *Opinion of Dec.* 7, 1827, 2 Op. 58.

6. Where a large amount of public money which had been deposited in the Bank of Vincennes was placed in jeopardy through the gross negligence of its officers: *Held* that the best remedy was a bill in equity, to be filed in the name of the United States against the individuals who were the president and directors of the bank in the years 1819, 1820, and 1821, and such of the stockholders during these years as appear to have had any instrumentality in perpetuating this wrong on the United States, or who have benefited by the wrong of others; and, also, against such debtors of the Bank of Vincennes as may have taken advantage of the resolution to pay off their debts in the stock of the bank. *Ibid.*

7. The release of the Norfolk Drawbridge Company to the United States, in order to extinguish the legal title of the corporation, must be a grant of their title under the corporate seal. *Opinion of Jan.* 5, 1833, 2 Op. 549.

8. It is a familiar rule in the law of corporations that those bodies have no other powers than such as are either expressly granted or necessarily implied in the acts creating them. *Opinion of Nov.* 28, 1834, 2 Op. 663.

9. Where a corporation, created by any State, proposes to sell its corporate property to the United States, and so extinguish the public uses thereof, there must be special consent of the State. *Opinion of Sept.* 22, 1856, 8 Op. 104.

10. A corporation which is not empowered by general or special law to convey its property discharged of corporate uses, directly by its own act, cannot do so indirectly by granting a mortgage and suffering the same to run to foreclosure. *Opinion of Oct.* 25, 1856, 8 Op. 118.

11. A corporation which holds property specially affected to certain public uses cannot of itself sell the same. *Opinion of Nov.* 13, 1856, 8 Op. 181.

COSTS.

See FEES AND COSTS.

COUNSEL.

See also COMPENSATION, VI; COURT-MARTIAL, VIII.

1. Any head of Department may, in his discretion, employ special counsel in behalf of the Government. *Opinion of May* 11, 1855, 7 Op. 141.

2. In a question of conflict of jurisdiction between a district court of the United States and the supreme court of a State, which question arises on a writ of *habeas corpus ad subjiciendum* issued by the latter to inquire into the legality of the detention of a prisoner by the marshal on the order of the former, it is proper for the Executive of the United States to allow counsel to the marshal, leaving the case otherwise to the regular course of judicial determination until the question be duly determined by the Supreme Court of the United States. *Opinion of Sept.* 7, 1855, 7 Op. 482.

3. Counsel retained by the United States for a given professional duty may be lawfully paid therefor, in whole or in part, before or during its performance and in anticipation of its absolute completion. *Opinion of May* 19, 1856, 7 Op. 686.

4. The services of counsel specially retained by any head of Department are in general chargeable to the funds of that Department. *Opinion of Feb.* 19, 1857, 8 Op. 398.

5. The power of the Secretary of the Interior to employ special counsel on behalf of the Government in the case of a private claim for public lands is undoubted, under the act of February 26, 1853, chap. 80. *Opinion of May* 9, 1861, 10 Op. 48.

6. The power given by the act of February 26, 1853, chap. 80, to the head of a Department to employ and pay counsel is limited to the employment of counsel for services which are professional, services which require legal skill and learning. *Opinion of May* 13, 1861, 10 Op. 41.

7. The Secretary of War has power to employ and pay special counsel to represent a military officer against whom a writ of *habeas corpus* has been issued by a circuit court in the case of a prisoner held in custody by him. *Opinion of Feb.* 7, 1868, 12 Op. 368.

8. He has also the right to employ and pay special counsel to examine the title to lands

urchased under the direction of the War Department. *Opinion of June* 12, 1868, 12 Op. 416.

COURTS.

See also CONSULAR COURT; COURT-MARTIAL; COURT OF CLAIMS; COURT OF INQUIRY; COURT OF RECORD; DISTRICT COURT OF THE UNITED STATES; SUPREME COURT.

I. *Jurisdiction.*
II. *Removal of Causes.*
III. *Foreign.*

I. Jurisdiction.

1. The refusal of a district judge to issue a warrant under the ninth article of the convention of November 14, 1788, between France and the United States, cannot be interfered with by the Supreme Court; the power of the district judge in such case being discretionary. *Opinion of March* 21, 1795, 1 Op. 55.

2. District judges are not the exclusive judges of their own jurisdiction. If the Supreme Court be of the opinion that they have jurisdiction, they must conform to its judgment. *Opinion of May* 9, 1795, 1 Op. 56.

3. The *high seas* are within the jurisdiction of the district and circuit courts of the United States; and if American citizens violate the neutrality laws thereon, such courts will take notice of the offense in any district where the offenders may be found. *Opinion of July* 6, 1795, 1 Op. 58.

4. Such offense being committed out of the territories of the United States, cannot be noticed by our courts; the offenders must be dealt with abroad, and, after proclamation by the President, will have forfeited all protection from the American Government. *Ibid.*

5. The treaty with Spain does not extend the jurisdiction of our courts to offenses committed in Spain, nor *vice versa;* and, according to the common law, the commandant of the island of Amelia is not liable to any public prosecution before any of our courts for his transactions in Florida. *Opinion of Jan.* 26, 1797, 1 Op. 68.

6. Pirates are to be prosecuted in the circuit court of the United States without regard to the nation they belong to. *Opinion of Sept.* 20, 1798, 1 Op. 85.

7. There is no provision of law concerning intercourse with the Indian tribes, or conferring jurisdiction upon courts, which can enable the United States to maintain a civil action against a debtor residing in the Indian country, upon a contract or indebtedness created in the States. *Opinion of April* 17, 1840, 3 Op. 514.

8. The circuit courts of the United States have not the power to enjoin the Auditor of the Post-Office Department from paying a contractor for carrying the mails, nor to enjoin the contractor from making collections from postmasters, according to his contract with the Government. *Opinion of Oct.* 21, 1841, 3 Op. 667.

9. The district court of Iowa has jurisdiction over Fort Atkinson, in the Indian country; and it will require a very clear case to justify the military authorities in resisting the mandate of the judiciary. *Opinion of Nov.* 23, 1842, 4 Op. 119.

10. Where a person having Cherokee Indian blood in his veins, and living as a trader, by permission, within the limits of the Cherokee Nation, west of the Mississippi River, who is at the same time recognized by law as a citizen of the State of Georgia, commits a crime, he is amenable to the laws of the United States, and entitled to a trial under them, instead of the laws enacted by the councils of the Cherokees. *Opinion of Oct.* 9, 1843, 4 Op. 258.

11. The courts of the United States have no authority to try a captain of a Georgia battalion of infantry on the charge of murder, alleged to have been committed by him on the person of Lieutenant Goff, of the Pennsylvania volunteers, at Perote, in Mexico, whilst that place was occupied by American troops, and under the authority of a military governor appointed by General Scott. *Opinion of Nov.* 15, 1848, 5 Op. 55.

12. The United States have no common law respecting crimes; no unwritten criminal code; nor have their courts jurisdiction except that conferred by acts of Congress, which do not confer jurisdiction over crimes committed in Mexico. *Ibid.*

13. The courts of the United States are the rightful judges of their own jurisdiction. *Opinion of Sept.* 9, 1853, 6 Op. 103.

14. The separation of an existing judicial district of the United States into parts does not take away the right to try offenses previously committed in either subdivision of the district. *Ibid.*

15. A judicial tribunal of the United States may have jurisdiction of crimes committed before its organization by Congress. *Ibid.*

16. Laws which only reorganize or otherwise modify the judicial tribunals of the United States are not *ex post facto* laws within the scope of the prohibitory clause of the Constitution. *Ibid.*

17. A person having been indicted and convicted on trial before the district court of the United States for the State of Wisconsin, for the forcible rescue of a fugitive from service in another State, who had been arrested by due process preparatory to extradition; and he having, after conviction, been released by the supreme court of the State on *habeas corpus: Held* that the action of the tribunals of the State was unlawful, and should be brought for review, by writ of error, before the Supreme Court of the United States. *Opinion of Feb.* 23, 1855, 7 Op. 52.

18. Rafael and Manuel Armijo sued out, in the territorial court of New Mexico, process of injunction and mandamus against the governor, as superintendent of Indian affairs, to compel him, out of the general moneys of the Government in his hands, as such to pay to the petitioners indemnity for losses suffered by them through the depredations of the Apaches: *Held* that the courts have no jurisdiction or authority over such moneys of the Government in the hands of the superintendent, either by injunction, mandamus, or any other process of law. *Opinion of March* 29, 1855, 7 Op. 80.

19. A white man, although he may have been adopted by Chickasaws or Choctaws, does not become subject in criminal matters to the jurisdiction of the courts of the Choctaw Nation. *Opinion of May* 23, 1855, 7 Op. 175.

20. But, in matters of civil jurisdiction, arising within the nation, its courts have jurisdiction over a white man who has voluntarily made himself a Chickasaw by intermarriage and exercise of all the rights of a Chickasaw, and where the question concerns property the proceeds of a head-right granted to him as a Chickasaw. *Ibid.*

II. Removal of Causes.

21. Alexander, a post-office agent, was sued in Georgia for damages for a malicious prosecution, and sought to have the cause removed to the federal courts, on the ground that he was a federal officer: *Held* that his being an agent in the employment of the Post-Office Department did not give the right; but if he were a citizen of a State other than Georgia, his case would have been provided for by acts of Congress. *Opinion of Dec.* 30, 1843, 4 Op. 300.

22. Under section 12 of the judiciary act of September 24, 1789, chap. 20, causes may be removed from State courts to the courts of the United States, where the matter in dispute exceeds five hundred dollars, and the suit is brought against an alien, or by a citizen of a State in which the suit is brought against the citizen of another State. *Opinion of Dec.* 31, 1851, 5 Op. 504.

23. If in the action, commenced in the State court of Virginia against the officer at Fort Monroe, the *ad damnum* be less than $500, and the officer himself be a citizen of Virginia, where the plaintiff resides, then, inasmuch as great interests are depending, an amendment to the act of 1789 is recommended, so that a removal of the suit may be had to the United States court. *Ibid.*

24. The provisions of section 67 of the act of July 13, 1866, chap. 184, for the removal of suits against internal-revenue officers, have no application to suits brought against such officers in the Territories. *Opinion of Aug.* 28, 1871, 13 Op. 584.

III. Foreign.

25. It has grown into a rule that a nation ought not to interfere in the causes of its citizens brought before foreign tribunals, excepting in the case of a refusal of justice—palpable and evident injustice—and when a suitor applies to a foreign tribunal for justice he must of necessity submit to the rules by which such tribunal is governed. *Opinion of Nov.* 4, 1794, 1 Op. 53.

26. It is upon a *definitive* sentence alone that a complaint of injustice can regularly be founded. The opinion of a foreign judge at

nisi prius can not, with propriety, be made the subject of discussion. If the plaintiff be not satisfied with the justice of his opinion it is his duty to put the cause in such a situation that its merits may be examined in the court of last resort. *Ibid.*

27. For the recovery of their property in the Spanish province of Florida, and for redress of injuries done there, our citizens should apply to the tribunals of that province. *Opinion of Jan.* 26, 1797, 1 Op. 68.

COURT-MARTIAL.

See also MILITARY LAW; LIMITATION, II.

I. *Generally.*
II. *Jurisdiction.*
III. *Accuser or Prosecutor.*
IV. *Proceedings.*
V. *Sentence.*
VI. *Reconsideration of Judgment.*
VII. *Disapproval of Proceedings.—New Trial.*
VIII. *Employment of Counsel.*

I. Generally.

1. The thirty-fifth of the Articles of War (act of April 10, 1806, chap. 20) makes it imperative on the commanding officer of a regiment, when complaint is made by an inferior officer or soldier, to summon a regimental court-martial to inquire into the truth or falsehood of the complaint, and decide thereon. But as its authority extends no further than a court of inquiry, the rules and practice of the latter should in general govern its proceedings. *Opinion of March* 16, 1811, 1 Op. 166.

2. Under section 15 of the act of June 26, 1812, chap. 107, punishment by court-martial of offenses committed on board of vessels having letters-of-marque is contemplated only when such offenses are committed without the jurisdiction of the United States. *Opinion of May* 24, 1814, 1 Op. 177.

3. The jurisdiction of military tribunals is not to be stretched by implication. *Ibid.*

4. A court-martial can take no cognizance of the validity of a contract. *Ibid.*

5. Chaplains, surgeons, and pursers, being non-combatant officers, are not competent to officiate as members of naval courts-martial. *Opinion of Nov.* 6, 1829, 2 Op. 297.

6. By the sixty-third of the Articles of War (act of April 10, 1806, chap. 20) a court-martial to try an officer of the Marine Corps performing duty on shore should be composed of officers of the Army and of the Marine Corps. *Opinion of Jan.* 21, 1830, 2 Op. 311.

7. The discretion vested in officers appointing courts-martial being merely directory to the officers appointing the court, their determinations whether more than five members can be convened without manifest injury to the service are conclusive. *Opinion of Oct.* 25, 1832, 2 Op. 534.

8. Specifications of a charge known to the Secretary of the Navy when former charges against the accused were prepared by him before another and a distinct court, upon a different and distinct matter, and which charge, so known, was then deferred for further consideration by the Department at the special request of the accused, may be tried before a subsequent court-martial, together with other charges not previously known. *Opinion of July* 25, 1845, 4 Op. 411.

9. The inhibitions contained in the thirty-eighth article of the Rules and Regulations for the government of the Navy (act of April 23, 1800, chap. 33) apply only to courts-martial ordered on the application of persons other than the Secretary himself. *Ibid.*

10. The number of persons detailed to constitute a court-martial, provided it do not fall below the minimum of five prescribed by statute, is a matter of discretion within the lawful authority of the officers appointing the court. *Opinion of June* 5, 1854, 6 Op. 506.

11. The under-graduate cadets of the Military Academy at West Point are not commissioned officers, and therefore are not competent to sit on a court-martial, and are triable by a regimental or garrison court-martial. *Opinion of July* 11, 1855, 7 Op. 323.

12. The graduated cadets, assigned to service as supernumerary officers, are brevet second lieutenants, and as such commissioned officers, and therefore subject to all the duties and entitled to exercise all the powers of that grade, including the legal capacity to sit on courts-martial as commissioned officers, and be tried only as such, according to the Articles of War. *Ibid.*

13. There is no law authorizing a court-martial to compel the attendance of witnesses who are not in the military service. *Opinion of March* 22, 1859, 9 Op. 311.

14. Witnesses who are not in the military service cannot be compelled to make depositions to be used in evidence before courts-martial on the trial of cases not capital. *Ibid.*

15. Under the seventeenth section of the act of August 3, 1861, chap. 42, the Secretary of the Navy has discretionary power to select for the trial of officers of the Marine Corps such commissioned officers, subject to his control and orders, as he may deem proper. *Opinion of Sept.* 23, 1861, 10 Op. 129.

16. Volunteer naval officers appointed under the act of July 24, 1861, chap. 13, are "commissioned officers," and competent to serve on general courts-martial. *Opinion of Sept.* 17, 1863, 10 Op. 522.

17. The twenty-fifth section of the act of March 3, 1863, chap. 79, authorizes compulsory process to be issued by judge-advocates for the attendance of civilians as witnesses before courts-martial, and such process may be directed to the officers who by the practice of the service are ordinarily charged with the duty of performing the executive business of those courts. *Opinion of Oct.* 2, 1868, 12 Op. 501.

18. Concerning the power of the President to appoint general courts-martial, see NOTE, 15 Op. 297.

19. P., a midshipman, was nominated and confirmed in March, 1868, to be ensign, the promotion being made "subject to examination." In July, 1868, having never been examined, he was tried by a naval court-martial as a midshipman and sentenced to dismissal from the service: *Held* that, under the circumstances, he was properly tried as a midshipman. *Opinion of Aug.* 7, 1880, 16 Op. 550.

20. In the absence of legislation, or of orders from competent authority, forbidding it, personal presence within the territorial limits of his command is not essential to the validity of an order given by a department commander appointing a court-martial within such limits. He may appoint general courts-martial, and act upon the record of proceedings of the same, when outside the territorial limits of his command. *Opinion of Aug.* 28, 1880, 16 Op. 679.

II. Jurisdiction.

21. Naval courts-martial may not try and punish murder which they suppose to have been committed on board a frigate at Norfolk. Jurisdiction in such cases belongs to the civil tribunals. *Opinion of Jan.* 23, 1812, 5 Op. 698.

22. Courts-martial of marine officers stationed on shore and convened under the Articles of War may try and sentence to suffer corporal punishment marines who have deserted from the public ships. *Opinion of March* 28, 1816, 1 Op. 187.

23. A sergeant of marines being accused of larceny at Gosport, Virginia, and doubt arising as to the jurisdiction of the civil courts over the offense, proceedings by court-martial are recommended. *Opinion of Nov.* 28, 1816, 5 Op. 705.

24. Whether a naval court-martial may try a lieutenant-colonel of the Marine Corps, *quære*. *Opinion of Aug.* 17, 1817, 5 Op. 706.

25. It is the right of an officer of the Marine Corps to be tried according to the true directions of the law, and he may raise objections to the jurisdiction of the court appointed to try him. *Ibid.*

26. Cadets at West Point form a part of the land forces of the United States, and have been constitutionally subjected by Congress to trial by court-martial. *Opinion of Aug.* 21, 1819, 1 Op. 276.

27. Courts-martial did not have jurisdiction over cases of disobedience of the governor of New York concerning the quota of ninety-three thousand men which he was invited to raise by the circular from the War Department of July 4, 1814, for the reason that it was no violation of any existing law of the United States, nor of the orders of the President. *Opinion of June* 19, 1821, 1 Op. 473.

28. It is wholly inadmissible under our Government to place the military above the civil authority, and therefore whilst an officer of the Navy remains in the custody of the latter for the purpose of prosecution for a homicide, he cannot legally be made amenable to a court-martial. *Opinion of May* 15, 1839, 3 Op. 466.

29. Whether, under the eighty-eighth of the Articles of War (act of April 10, 1806, chap. 20), the accused can be brought to trial before the court-martial which two years before had

issued an order for his trial and suspended its execution under peculiar circumstances, *quære*. *Opinion of Feb.* 10, 1842, 3 Op. 749.

30. In 1832 an officer of the Marine Corps was tried by a court-martial and sentenced to be cashiered, but the sentence was commuted to suspension for a limited period. In 1833 he was appointed a lieutenant in the Army: *Held* that after the lapse of sixteen years his case cannot be examined with reference to the competency of the court-martial by which he was tried. *Opinion of June* 23, 1851, 5 Op. 384.

31. According to the eighty-eighth of the Articles of War (act of April 10, 1806, chap. 20) no person is liable to be tried and punished by a general court-martial for any offense which shall appear to have been committed more than two years before the issuing of the order for such trial, unless the person, by reason of having absented himself or some other manifest impediment, shall not have been amenable to justice within that period. *Opinion of Dec.* 30, 1853, 6 Op. 239.

32. This limitation cannot be waived by the accused, nor can he, even with his consent, be tried by a general court-martial ordered after the time prescribed by statute. *Ibid.*

33. An officer may be tried by court-martial for the military relation of an act after having been tried by the civil authorities for the civil relations of the same act. *Opinion of June* 5, 1854, 6 Op. 506.

34. Whether, when an officer of the Army, while under charge of any military offense, is dismissed from the service by the President, he may afterwards be arrested and tried by court-martial for the offense, *dubitatur*. *Opinion of Jan.* 20, 1857, 8 Op. 328.

35. Where charges were preferred against an officer in the Army for disobedience of orders in June, 1856, and in September following, for other reasons, he was dismissed the service by the President, no court-martial having been ordered to investigate the charges against him, it was held that, on his being restored to the Army, he could not be tried on the charges pending against him at the time of his dismissal after the lapse of two years since the commission of the alleged offenses. *Opinion of Aug.* 16, 1858, 9 Op. 181.

36. The question whether an officer who has been dismissed the service is liable to be tried by a court-martial for offenses previously committed examined, but no opinion given thereon. *Ibid.*

37. One T. was apprehended in April, 1871, on the charge of having deserted from the Army in October, 1865, and was detained for trial by a court-martial for that offense. He had enlisted in August, 1865, for the term of three years; from the time of the alleged desertion to the time of the arrest more than five years had expired, and from the expiration of the term of enlistment to the arrest more than two years: *Advised* that the court-martial has no jurisdiction to try the case, because of the bar presented by the eighty-eighth Article of War. *Opinion of June* 23, 1871, 13 Op. 462.

38. Civilian employés serving with the Army, in the Indian country, during offensive or defensive operations against the Indians, are subject to military jurisdiction and trial by court-martial, under the provisions of the sixtieth Article of War (act of April 10, 1806, chap. 20). *Opinion of April* 1, 1872, 14 Op. 22.

39. Where a military officer detailed for duty in the Freedmen's Bureau has been guilty of misappropriation of money, or any violation of the rules and regulations governing disbursing officers of the Army, he may be tried by court-martial in the same manner as any other such Army officer. *Opinion of July* 3, 1873, 14 Op. 269.

40. Civil engineers in the Navy are subject to the jurisdiction of naval courts-martial. *Opinion of Aug.* 19, 1876, 15 Op. 597.

41. A quartermaster's clerk (*i. e.*, a *civilian* employed in that capacity) is not amenable to court-martial jurisdiction. *Opinion of May* 15, 1878, 16 Op. 13.

42. Nor are superintendents of national cemeteries appointed under sections 4873 and 4874 Rev. Stat. amenable to such jurisdiction. *Ibid.*

43. The statutes of the United States, in so far as they declare what persons or classes of persons are thereby made liable to military law and subjected to the jurisdiction of military courts, reviewed. *Ibid.*

44. Where a quartermaster's civilian clerk was under arrest by the military authorities, at a post in the State of Nebraska, on a charge of conspiring to defraud the Government: *Held* that the accused was not subject to court-martial jurisdiction. *Opinion of June* 15, 1878, 16 Op. 48.

45. A soldier was sentenced by a court-martial to be dishonorably discharged from the service and to be imprisoned in the military prison at Fort Leavenworth for two years. While in confinement under this sentence he committed offenses punishable by the Articles of War, for which he was a second time tried by court-martial and sentenced to imprisonment in the same prison for an additional term of three years, which he is now serving out: *Held* that under section 1361 Rev. Stat. valid authority exists for the trial by court-martial of prisoners in the military prisons who while serving out the term of their imprisonment commit offenses punishable by military law, although they have been discharged from the Army by the sentence under which they are imprisoned. *Opinion of March* 26, 1879, 16 Op. 293.

46. Such prisoners are to be regarded as still connected with the military service and subject to military government for the purposes of discipline and punishment; and the sentence, part of which is dismissal from the service, must be understood to not do away with that relation during their imprisonment. *Ibid.*

47. Where an assault was committed on board a steamer belonging to the Navy (the vessel being at the time under way in the Thames River, opposite the city of New London, Conn.), by a coal-heaver in the naval service upon a second-class fireman in the same service, from the effects of which the latter subsequently died: *Held* that a naval general court-martial can, under article 22 of section 1624 Rev. Stat., take jurisdiction of the offense as manslaughter. *Opinion of Nov.* 15, 1880, 16 Op. 579.

48. That article is not intended to confer upon a court-martial general criminal jurisdiction, but only jurisdiction over those offenses (not specified in the preceding articles of said section) which are injurious to the order and discipline of the Navy, the jurisdiction being given for the purpose of preserving that order and discipline. *Ibid.*

III. Accuser or Prosecutor.

49. Where the record of a trial before a court-martial is defective, in failing to show who was the originator or signer of the charges against the accused, and who is to be treated legally as the accuser or prosecutor, evidence *aliunde* is admissible to supply the information. *Opinion of Aug.* 1, 1878, 16 Op. 107.

50. A commander of division who, upon information laid before him of grave misconduct on the part of a regimental officer in his command, directed the colonel of the regiment (from whom the information was received) to prefer charges against the alleged offender, and who saw that the charges were put in proper form, and to that extent superintended their preparation, cannot be deemed the accuser or prosecutor of such alleged offender in the sense of the act of December 24, 1861, chap. 3 (section 1342 Rev. Stat., article 73). *Ibid.*

IV. Proceedings.

51. The provision in the eighty-seventh of the Articles of War (act of April 10, 1806, chap. 20) that "no officer, &c., shall be tried a second time for the same offense," is borrowed from the common law, and is not held, either in civil or military tribunals, to preclude the accused from having a second trial on his own motion. *Opinion of Sept.* 14, 1818, 1 Op. 233.

52. It is error for a court-martial to refuse a second trial to the accused when the same has been ordered by the President. *Ibid.*

53. The plea of *autrefois acquit*, or *convict*, is the privilege of the accused, which he may use or waive at pleasure; if he does not choose to use it, courts will not take notice of it so as to bar a trial. *Ibid.*

54. A plea before a court-martial of a former arrest and discharge is bad; a former trial only is a defense under the eighty-seventh of the Articles of War (act of April 10, 1806, chap. 20). *Opinion of April* 29, 1819, 1 Op. 294.

55. As to the perspicuity and precision of the charges, if the description of the offense is sufficiently clear to inform the accused of the military offense for which he is to be tried, and to enable him to prepare his defense, it is sufficient. *Ibid.*

56. Where a court-martial has been ordered and the names of the officers and supernumeraries to compose it are set forth in the warrant, and by reason of the non-attendance of one of the officers on the first day a supernumerary takes his place, and the court thus organized proceeds to business, the absent member cannot properly thereafter be added to the court upon his arrival, until the case on trial has

been disposed of, if at all; yet if the practice has been otherwise, and has been acquiesced in, it may be safely followed. *Opinion of Nov.* 18, 1824, 1 Op. 698.

57. The judge-advocate has the right of a reply in a military trial, and so has the accuser when acting as prosecutor; but such reply ought to be a commentary on the evidence introduced by the prisoner, and on his remarks in enforcing it. No new matter should be introduced at this stage of the trial without special leave; and then the prisoner should also have leave to rejoin. *Opinion of Nov.* 3, 1829, 2 Op. 287.

58. Where the warrant of a naval court-martial, though general, is accompanied with a specification of persons to be tried, with a reference to the charges to be exhibited against them, the court need not be resworn on the trial of each successive case. *Opinion of Nov.* 6, 1829, 2 Op. 297.

59. It is not proper to introduce depositions in courts-martial, except under certain restrictions, in cases not capital. Such courts should adhere to the rules of evidence established in common law courts of criminal jurisdiction. *Opinion of June* 4, 1830, 2 Op. 344.

60. It is irregular for a member of a court-martial who has been absent during a portion of the trial, and who therefore did not hear the witnesses testify, to take part in sentencing the accused. *Opinion of March* 2, 1831, 2 Op. 414.

61. If it has been the usage in cases like that considered in the opinion given November 6, 1829 (2 Op. 297), for members of naval courts-martial to take the oath but once, and this practice has been sanctioned by the Government, such usage and practice are a sufficient evidence of the construction given to the law (act of April 23, 1800, chap. 33, art. 36 of sec. 1) by the competent authorities, and that the oath so taken was held by them to apply to all the cases that should come before the court. *Opinion of Sept.* 1, 1831, 2 Op. 460.

62. Courts-martial may receive testimony *after* a plea of guilty, showing the degree and character of the offense, if the punishment is discretionary. *Opinion of April* 11, 1834, 2 Op. 636.

63. The judge-advocate of a court-martial is required to be sworn; and if the proceedings of the court do not show that he was sworn, it is to be presumed that he was not, and the proceedings may be regarded as irregular and void. *Opinion of Dec.* 24, 1838, 3 Op. 397.

64. In such cases the accused may be put upon another trial; but not before the same officers who constituted the first court. *Ibid.*

65. It is a fatal error in proceedings before courts-martial for the president of the court to omit to administer an oath or affirmation to the judge-advocate before proceeding to trial. *Opinion of June* 9, 1840, 3 Op. 544.

66. It is error in proceedings before courts-martial to receive evidence after the court has been cleared for deliberation. *Opinion of June* 23, 1840, 3 Op. 545.

67. In the case under consideration, where the jurisdiction of the court was called into question on account of the early date of the enlistment, the record ought to have contained authentic evidence of the terms and period of the enlistment, that the revising officer might judge whether or not the court had jurisdiction. *Ibid.*

68. It is not sufficient to return the inferences or conclusions of courts-martial, nor mere statements of the evidence, or books or papers inspected; but the evidence itself on which they based judgment must be returned. *Ibid.*

69. Where a naval court-martial tried a master-at-arms for desertion, on a charge headed with a caption styling the accused "master-at-arms," and discharged him on the ground that since his arrest he had not been borne on the ship's books as such, and that the charge could not at that stage of the trial be revised: *Held* that the decision was erroneous, there being no ground for the court to refuse to proceed to judgment on the merits. *Opinion of June* 24, 1840, 3 Op. 548.

70. The plea of *autrefois acquit*, averring a former trial and acquittal for manslaughter in the supreme court of a State upon the same evidence as must be used to sustain the charge of unofficer-like or ungentleman-like conduct under the eighty-third of the Articles of War (act of April 10, 1806, chap. 20), is not a bar to proceedings in a court-martial for the trial of an officer on such charge. *Opinion of Feb.* 10, 1842, 3 Op. 749.

71. Whether a member of a court-martial who participated in the proceedings of the same at the commencement of its sitting, but who, from sickness, had been unable to attend dur-

ing the trial of the whole case, could afterwards, on recovering his health, resume his seat again as a member of the court without a new precept issued, should be decided according to the settled practice in such cases. *Opinion of March* 16, 1842, 4 Op. 7.

72. If, during the pendency of a trial before a court-martial, one of its members fall sick and be thereby disabled from sitting with the court for several days, the remaining members may adjourn the court from day to day until he is able to attend with them again to complete the trial. *Opinion of April* 15, 1842, 4 Op. 17.

73. Commodore Barron was tried by a competent court, whose sentence was approved by the President. After the lapse of thirty-five years the Executive will not look into the particulars of the trial on an allegation that it was irregular. If there were irregularities in the trial they should have been alleged before the sentence was confirmed. *Opinion of April* 3, 1843, 4 Op. 170.

74. Objection to a naval court-martial because consisting of only nine members, must be taken during the trial, as only involving the question of fact whether a greater number of officers could have been detailed without injury to the service, and not being a ground of nullity. *Opinion of March* 13, 1854, 6 Op. 369.

75. Where a prosecution of an officer before a court-martial was instituted, and he was arraigned within the two years requried by law, and pleaded the pendency of civil proceedings arising in the matter, whereupon the proceedings of the court-martial were suspended until a period after the lapse of the two years: *Held* that the statute of limitation could not then be pleaded in the case. *Opinion of June* 5, 1854, 6 Op. 506.

76. Upon certain charges Capt. S. W. Downing, of the Navy, was tried by court-martial and sentenced to be dismissed; which sentence was approved by the President and duly carried into effect by the Secretary of the Navy. After this, Captain Downing, in a communication to the Secretary of the Navy, claimed that the proceedings in the case were illegal and void because of the following facts: The court was composed of thirteen members, six of whom were junior in rank to Captain Downing, and six of them senior to him, exclusive of the president, who was also his senior. During the trial Captain Forrest, one of the members of the court, was absent two days by reason of sickness. On his reappearing to resume his seat, it was decided by the court that he could not do so, and the case proceeded to conclusion without the further presence of Captain Forrest: *Held* that the dismissal is a consummated fact, whether the sentence was lawful or not, and if the party be restored to the service it can only be by renomination to the Senate and reappointment; and, further that in the present stage of the case no question on the proceedings of the court can be raised save that of nullity of sentence for want of jurisdiction. *Opinion of April* 11 1855, 7 Op. 99.

77. It is doubtful whether the court had lawful authority to exclude Captain Forrest under the circumstances stated. But his exclusion does not affect the proceedings of the court with nullity, and if it were an irregularity, should have been taken advantage of before the sentence, or at least before the approval of the sentence by the President. *Ibid.*

78. A specification of charge is good, and will support the finding and sentence upon it, with or without descriptive designation of the quality of the imputed criminal act, provided it appear that the facts alleged and proved constitute, in any point of view, the offense charged. *Opinion of Dec.* 1, 1855, 7 Op. 601.

79. Any person having an interest in the record of a naval court-martial on file in the Navy Department is entitled to have an exemplified copy of it after the proceedings are consummated by the action of the proper revisory authority. *Opinion of Jan.* 3, 1865, 11 Op. 137.

80. Public justice and private right require that the Secretary of the Navy and his subordinate officers should not withhold their testimony in regard to the contents of such a record when required to give it by the summons of a State court. *Ibid.*

81. Where, at the organization of a naval court-martial, each member of the court was first sworn by the judge-advocate, who was then sworn by the president of the court instead of the oath being first administered by the president to the judge-advocate, and then by the latter to each member of the court, as prescribed by the act of July 17

1862, chap. 204: *Held* that, notwithstanding the irregularity in the order of administering the oaths, the proceedings of the court must now be held valid. *Opinion of Jan.* 20, 1871, 13 Op. 374.

82. Where the accused was tried and convicted by a general court-martial on three distinct charges, one of which had been preferred by a member of the court, who testified as a witness in support of the same and afterwards sat upon the trial, no objection being made thereto by the accused, and the sentence of the court was duly confirmed: *Held* that the fact that a member of the court sat upon the trial after testifying did not render its proceedings invalid or make its sentence void and inoperative. *Opinion of Jan.* 19, 1878, 15 Op. 432.

83. The objection, where it is not distinctly waived by the accused, goes to the *propriety* of the member sitting after he had testified, not to his *legal capacity* thus to sit; and, if seasonably made, it would afford good ground for disapproval of the proceedings by the reviewing officer, though not of itself sufficient to invalidate them. *Ibid.*

84. The minority of some of the members of the court martial is not available as an objection to the validity of its proceedings. *Opinion of Aug.* 7, 1880, 16 Op. 550.

V. Sentence.

85. No sentence of a naval court-martial held within the United States can be executed until confirmed by the commander of the fleet in which the offense occurred, or by the officer ordering the court. *Opinion of Sept.* 23, 1819, 1 Op. 309.

86. The power of the President over a sentence is a power over the whole of it; and he may approve, reject, or mitigate the same at pleasure. *Opinion of Nov.* 3, 1829, 2 Op. 287.

87. A sentence of "dismissal" is legal. *Ibid.*

88. Dismission from the United States squadron is a legitimate punishment for a court-martial to pronounce. *Opinion of Nov.* 6, 1829, 2 Op. 297.

89. Sentences of naval courts-martial which are organized with only five members are not on that account invalid. *Opinion of Oct.* 25, 1832, 5 Op. 534.

90. The sentence to be cashiered, pronounced by the court-martial in the case of Lieutenant Whitney, is not illegal nor unconstitutional, though it is, under the circumstances of the case, severe and harsh. *Opinion of June* 1, 1841, 3 Op. 631.

91. A sentence of dismissal from service, approved by the President, cannot be annulled. The officer dismissed can be restored only by a new nomination by the President, the confirmation of the Senate, and all the requisites to constitute an original appointment to office. *Opinion of Nov.* 6, 1843, 4 Op. 274.

92. Even though the proceedings of the court-martial were irregular, if the sentence of dismissal were pronounced, approved, and carried into effect, there is no means of reviewing it. *Ibid.*

93. The President has power to mitigate sentences of courts-martial by commuting sentences of dismission from service to suspension, without pay or emoluments, for a limited time. Hence an assistant surgeon in the Navy, who was dismissed by a court-martial for disobedience, neglect of duty, and disrespect to his commanding officer, but whose sentence was commuted to suspension for twelve months without pay, is not entitled to pay during the period of such suspension. As dismission deprived the officer of his pay forever, the suspension of his office and his pay for one year only is an inferior and milder degree of the punishment decreed by the court. *Opinion of Oct.* 12, 1848, 5 Op. 43.

94. The Secretary of the Navy has power to approve the sentence of a court-martial convened by him where the sentence of the court does not extend to loss of life, or to the dismissal of a commissioned or warrant officer. The Secretary is an "officer" within the meaning of the act of 23d April, 1800, chap. 33. *Opinion of Feb.* 10, 1852, 5 Op. 508.

95. A general commanding the forces of the United States in the field does not possess power to commute the sentence of cashiering pronounced by a court-martial, but only the power to execute the sentence, or to suspend it and take the direction of the President. *Opinion of Sept.* 20, 1853, 6 Op. 123.

96. A sentence of suspension merely by a naval court-martial does not deprive the party of pay and emoluments. *Opinion of Oct.* 27, 1853, 6 Op. 200.

97. After the sentence of a court-martial dismissing an officer has been approved and acted

on by the President it cannot be revised except for suggestion of absolute nullity in the proceedings. *Opinion of March* 13, 1854, 6 Op. 369.

98. After sentence of an officer of the Army by a court having jurisdiction has been approved and executed by one President it cannot be revised by his successor. *Opinion of June* 5, 1854, 6 Op. 506.

99. A naval court-martial may lawfully sentence a seaman to the penitentiary in the District of Columbia to be confined at hard labor for three years, to be deprived of his pay, and to be marked with the letter D on his right hip. *Opinion of Sept.* 5, 1857, 9 Op. 80.

100. It is well settled that it is beyond the power of the President to annul or revoke the sentence of a court-martial which has been approved and executed under a former President. *Opinion of June* 13, 1861, 10 Op. 64.

101. The rule is not confined to cases in which, by the Articles of War, the sentence of the court is required to be approved by the President. *Ibid.*

102. For an offense against article 12 of section 1 of the act of April 23, 1800, chap. 33, for the government of the Navy, a marine general court-martial may legally sentence the prisoner to imprisonment in the penitentiary of the District of Columbia at hard labor for a term of years, that punishment not being against the usages of the service. *Opinion of Nov.* 8, 1861, 10 Op. 158.

103. Courts-martial, in cases within their lawful jurisdiction, may condemn persons to imprisonment at hard labor in the penitentiary of the District of Columbia, in punishment of crime. *Opinion of May* 8, 1862, 10 Op. 248.

104. After the trial and conviction of an officer of the Navy by a court-martial having jurisdiction of the case, and the approval of the sentence dismissing him from the service by the President, and such sentence has been carried into execution, the President cannot reconsider his approval and revoke the sentence of the court. *Opinion of March* 12, 1864, 11 Op. 19.

105. But while the judgment entered by the President upon such a sentence is, after it has been executed, irrevocable, he may remove the guilt of the dismissed officer by pardon. *Ibid.*

106. The sentence of an acting master's mate, dismissing him from the service, by a court-martial convened by the commander of a fleet, may be lawfully carried into ex confirmation of the officer order *Opinion of June* 20, 1865, 11 Op.

107. Neither the President no the Navy has lawful authority disapprove the sentence in such

108. If a sentence in such a c approved by the Secretary of t President has no power, after th been carried into execution, to order of the Secretary and restor the service. *Ibid.*

109. A naval court-martial, u for an offense not capital under cles 7 and 8 of the act of July 1 204, may sentence to imprison labor. *Opinion of Oct.* 9, 1868,

110. A sentence of permanent d dealing with the Government naval supplies, in the case of a c victed by a court-martial, is un the usage of the service, and is gal. *Opinion of Nov.* 24, 1868, 1

111. Where forfeiture or loss c a part of the sentence of a cou addition to confinement or sus duty, the former may be rem proper authority, in whole or i out also remitting the latter. *O* 9, 1876, 15 Op. 175.

112. It is not necessary that should attach his sign manual t of a sentence rendered by a co time of peace, cashiering a com cer, in order to make the sente It is sufficient for this purpose i of the sentence is signified thr tested by the Secretary of War i signed by the latter. *Opinion of* 15 Op. 291.

113. Paragraph 896 of the Reg Army does not apply to the courts-martial which require t the President. It is applicable proceedings which may be con officer who ordered the court t the commanding officer for the the case may be. *Ibid.*

114. The action of the Presid relating to the Army which re proval and direction may, in gen fied through and authenticated the Department of War. Where

in such matters, he acts, in contemplation of law, under the direction of the President, and is to be regarded as the mere organ of the Executive will. This principle has been long and frequently acted upon in making known the will or determination of the President in cases of sentences of courts-martial required to be laid before him for confirmation or disapproval. *Ibid.*

115. A statement made and signed by the Secretary of War, announcing the approval by the President of a court-martial sentence, is a sufficient authentication of the act of the President, without an express averment therein that it is made by direction of the President, the presumption being always that such direction was given. *Ibid.*

116. An act of the President remitting part of a court-martial sentence may be authenticated in the same way in which his act confirming such sentence can be authenticated. Where partial remission is made at the time of confirmation, the two acts are, in practice, signified and attested together in the same way. *Ibid.*

117. When the sentence of a court-martial, lawfully confirmed, has been executed, the proceedings in the case are no longer subject to review by the President. *Ibid.*

118. Q., a commander in the Navy, having been tried and sentenced to dismissal from service by a naval court-martial, the record of the proceedings and sentence was submitted to the President, who, on the 5th of June, 1874, approved the same. On the 9th of same month the Secretary of the Navy addressed a letter to Q. (then in Boston), informing him of the approval of the sentence, and stating that from that date (June 9, 1874) he would "cease to be an officer of the Navy." On the 12th of same month the Secretary again addressed a letter to Q., asking him to return the letter of dismissal. On the 8th of December following the Secretary addressed a third letter to Q., stating that the sentence of the court-martial "was, on the 9th day of June, 1874, mitigated to suspension from rank," &c., "to date from that day." In the mean time, viz, on the 10th of June, S., a lieutenant-commander, was nominated to be a commander in the Navy, from the date last mentioned, vice Q., dismissed, and this nomination was confirmed on the 12th of June, and a commission issued to S. same day. *Held:* (1.) That the letter of the Secretary of the Navy of December 8 is satisfactory proof, not only of the mitigation of the sentence by the President, but that it was mitigated by him on the 9th of June. (2.) That the letter of dismissal, in execution of the sentence, forwarded by the Secretary on the 9th of June (it being manifest that the complete execution of the sentence, by means of that letter, could not take place on that day), was *then* revocable; and the mitigation of the sentence was in effect a revocation of the letter. (3.) That it was competent to the President, under the circumstances, to mitigate the sentence when he did. (4.) That the subsequent appointment of S. could not render ineffectual the previous mitigation of the sentence. And in view of the fact that the *mitigated* sentence has been put in execution by a former administration, by which all questions in the premises must be presumed to have then been fully considered: *Advised* that this action be now treated as a final determination of the matter as regards the status of Q. *Opinion of March* 16, 1878, 15 Op. 464.

119. Where an Army officer was sentenced to dismissal from the service, and the sentence, without having been approved by the President, was carried into effect under orders of the War Department: *Held* that the subsequent recognition by the President of the vacancy thus occasioned by making an appointment during a recess of the Senate, or a nomination to that body (followed by the issuance of a commission with the consent of the Senate) of a person to fill the place of such officer, operates as a confirmation by him of the sentence and orders. *Opinion of April* 1, 1879, 16 Op. 298.

120. Whether a sentence of court-martial has been confirmed by the President is to be determined by evidence, no specific form for this act having been provided by statute. *Ibid.*

121. On the 28th of January, 1869, the Secretary of the Navy addressed a letter to B, as follows: "In consequence of the facts appearing upon the record of the naval general court-martial before which you were tried, November 16, 1868, on board the U. S. S. Pawnee, at Montevideo, Uruguay, you are dismissed the naval service, and will from this date cease to be regarded as an officer in the United States

Navy:" *Held* that this must be regarded as a dismissal by reason of the disclosures in the record (which dismissal the Executive had then no power to make), and not as a confirmation and execution of the sentence. *Opinion of April* 30, 1879, 16 Op. 312.

122. C., being then a soldier in the service of the United States, was, on the 24th of March, 1865, sentenced by a court-martial to be hanged for desertion, robbery, and murder. The proceedings of the court were approved by the officer in command of the department, and the sentence ordered to be executed on the 21st of July, 1865. The execution did not take place, for the reason (as is presumed) that the prisoner escaped. In 1870 C. applied to the military authorities for an honorable discharge (the application being based on certain statements afterwards discovered to be false), which was granted, and dated June 5, 1865. This discharge was subsequently revoked and the certificate canceled by the War Department, on the ground that it was given under a misapprehension of facts caused by the false statements aforesaid. On the 5th of May, 1875, he was dishonorably discharged as of July 21, 1865, the day appointed for his execution. *Held* (1) that the revocation of the "honorable discharge" and cancellation of the certificate thereof were proper; (2) that the second discharge operated to cut C. off dishonorably from the service, but did not alter his status as a military prisoner awaiting execution of sentence; (3) that no legal obstacle now exists to the execution of the sentence. But (on considerations stated in the opinion) recommended that the sentence be commuted to imprisonment for life, or to such term of years as the President may in his discretion determine. *Opinion of May* 27, 1879, 16 Op. 349.

123. Notification by the Secretary of the Navy of the approval by the President of the sentence is sufficient evidence both of approval and promulgation. *Opinion of Aug.* 7, 1880, 16 Op. 550.

VI. Reconsideration of Judgment.

124. Courts-martial have the power to reconsider any judgment and sentence rendered by them during the term or sitting, and to change the judgment and sentence, even to death, where the former imposed only imprisonment. But the execution of a sentence of death is murder, unless the court pronouncing it consisted of thirteen commissioned officers, where that number could have been convened without manifest injury to the service. *Opinion of Aug.* 29, 1819, 1 Op. 297.

125. The President may direct a naval court-martial to reconsider their judgment in cases where his previous sanction is necessary for the execution of such judgment. *Opinion of April* 20, 1842, 4 Op. 19.

126. It is in the power of the Secretary, or other authority appointing a court-martial, to order the case back for revision, both in the Army and Navy. But this must be done before the court has actually been dissolved. *Opinion of Oct.* 27, 1853, 6 Op. 200.

127. Where a general court-martial duly organized by order of the Secretary of War was, after report, required by him to reassemble to revise its sentence, and on reassembling two of the original members were absent from whatever cause, but a legal quorum of the court still remained: *Held* that the absence of the two members at the reassembling of the court did not impair its jurisdiction, or otherwise affect its power to revise the sentence; and that it still was the same continuous and competent court as when it first assembled under the order of the Secretary. *Opinion of July* 12, 1855, 7 Op. 338.

VII. Disapproval of Proceedings.—New Trial.

128. The President has power to order a new trial before a court-martial where in his opinion the court erred in the first trial in excluding proper evidence. *Opinion of Sept.* 14, 1818, 1 Op. 233.

129. The Executive will not set aside proceedings of courts-martial merely because they have admitted the testimony of negroes or made other mistakes, though objected to, where it appears upon the whole case that justice has been done, and that the verdict is substantially right. *Opinion of April* 27, 1840, 3 Op. 523.

130. B., a paymaster in the Navy, was tried and convicted by a naval general court-martial, convened on board the United States ship Pawnee, at Montevideo, Uruguay, in November, 1868, under an order of Rear-Admiral C. H. Davis, commanding the South Atlantic Squadron, and was sentenced (*inter alia*) to be

dismissed from the naval service. The record of the proceedings was received at the Navy Department with the following, signed by Rear-Admiral Davis, indorsed thereon: "Respectfully forwarded, with the remark that the finding of the court is not sustained by the evidence, which fails to show that the accused received from the bank the amount of money he is charged with having received." *Held* that the action of the officer who ordered the court (Rear-Admiral Davis), in forwarding the proceedings with that indorsement thereon, cannot be deemed to be a disapproval of the sentence of the court. Such disapproval should be distinctly expressed. *Opinion of April* 30, 1879, 16 Op. 312.

VIII. Employment of Counsel.

131. According to the law regulating courts-martial, the judge-advocate is the official prosecutor; and in cases arising in the Navy he is by custom either a naval officer specially designated, or a lawyer employed for that purpose. But by force of section 17 of the act of June 22, 1870, chap. 150, where the case before the court-martial is of such a character as to render it expedient that the proceeding be conducted by a lawyer, the Secretary of the Navy is not at liberty to employ counsel, but should call upon the Department of Justice to supply an officer for that service. *Opinion of April* 25, 1871, 13 Op. 515.

132. The head of the Navy Department cannot, consistently with the provisions of section 17 of the act of June 22, 1870, chap. 150, employ an attorney or counsellor at law to conduct proceedings before a naval court-martial. Opinion of Attorney-General Akerman on same subject (13 Op., 515) examined and concurred in. *Opinion of March* 4, 1872, 14 Op. 13.

COURT OF CLAIMS.

See also CLAIMS, XIX.

An officer of the Bureau of Military Justice cannot lawfully act as counsel for claimant in the Court of Claims, in the prosecution of the claim of another Army officer against the United States. *Opinion of April* 12, 1880, 16 Op. 478.

COURT OF INQUIRY.

1. The limitation of the eighty-eighth Article of War (act of April 10, 1806, chap. 20), does not apply to courts of inquiry; for the objects of a court of inquiry are not confined to investigation as preparatory to a court-martial, but extend to the legal procurement of information of any sort material to the military service or the discipline and government of the Army. *Opinion of Dec.* 30, 1853, 6 Op. 239.

2. Courts of inquiry are inherently close courts, to which defendants generally, and auditors and spectators occasionally, have access by permission, and not of right. *Opinion of Jan.* 31, 1857, 8 Op. 337.

3. The action of courts of inquiry, whether as to transactions or persons, is not decision, but advice only for the information of the Executive. *Ibid.*

4. There is by law no prescription of time limiting the scope of inquiry of courts of inquiry whether in the Navy or the Army. *Ibid.*

COURT OF RECORD.

The phrase "court of record," is borrowed from the English law, and it is proper to look to that law for its meaning. According to that law the mere fact of keeping a registry of its proceedings is not enough to make a court of record. In the United States a court of record is one expressly made so by the law of the State which creates it; or which has been expressly so adjudged by the tribunals of the State; or which proceeds according to the course of the common law, with a jurisdiction unlimited in point of amount, keeping a record of its proceedings; or which has the power of fine and imprisonment. *Opinion of May* 9, 1820, 1 Op. 356.

CRIMES AND MISDEMEANORS.

See also LIMITATION.

1. Acts of hostility committed by American citizens against such as are in amity with us, being in violation of the treaty and against the public peace, are offenses against the United States so far as they were committed within

the territory or jurisdiction thereof, and as such are punishable by indictment in the district or circuit courts. Acts of the kind occurring in a foreign country are not within the cognizance of our courts. *Opinion of July* 6, 1795, 1 Op. 58.

2. It is a misdemeanor to plot and combine to disturb the peace and tranquility of the United States, and to draw them into a war with a foreign nation. *Opinion of July* 28, 1797, 1 Op. 75.

3. It is treason for a citizen or other person not commissioned within the United States to abet France during a maritime war with her. *Opinion of Aug.* 21, 1798, 1 Op. 84.

4. Offenders against the United States may be arrested, imprisoned, or bailed, agreeably to the usual mode of process in a State, but can be tried only before the court of the United States having cognizance of the offense. *Opinion of Sept.* 20, 1798, 1 Op. 85.

5. The authority of our Government to take, forcibly detain in custody, and bring to this country from Europe, a person charged with barratry on private property is doubtful. The offender, if he were here, would be amenable to our courts. *Opinion of Oct.* 29, 1802, 1 Op. 123.

6. There being no evidence of criminal intention or criminal conduct: *Advised* that a person suspected as a spy should not be detained as such. *Opinion of March* 5, 1813, 1 Op. 172.

7. Offenders against naval laws are kept in the custody of the naval service. *Opinion of May* 12, 1813, 1 Op. 172.

8. No statute makes it a specific offense to cut timber from the public lands. *Opinion of Nov.* 27, 1816, 1 Op. 194.

9. Fraud by forgery, perjury, subornation of perjury, and the corruption of a justice of the peace, is not an offense punishable under the laws of the United States. Yet perjury committed in depositions taken pursuant to the laws of the United States is punishable. *Opinion of March* 8, 1818, 1 Op. 210.

10. Offenders committed to prison in a district other than that in which the offense is to be tried may be removed to the latter to be tried by a warrant of the judge of the district where they are imprisoned. *Opinion of Nov.* 10, 1820, 1 Op. 404.

11. Prosecutions for false swearing may be sustained in the courts of the United States against persons who shall have made false affidavits or affirmations before judicial officers of the United States or State, or State officers generally authorized to administer oaths, for the purpose of supporting claims, although the particular law under which the claims are made are silent on the subject. *Opinion of Jan.* 21, 1835, 2 Op. 700.

12. The fraudulent taking of copies of invoices, manifests, bills of lading, letters, and a deposition, from the possession of a clerk in the Department of State, who had charge of the papers of the late Board of Commissioners for adjusting claims of citizens of the United States against Mexico, does not seem to come within any law for the punishment of crime. *Opinion of March* 18, 1852, 5 Op. 523.

13. A clerk in a post-office acting as a cashier is a public officer within the meaning of the penal clause of the sub-treasury act of 6th August, 1846, chap. 90, and liable to prosecution under it for embezzling funds intrusted to him. *Opinion of March* 3, 1853, 5 Op. 685.

14. An officer or soldier of the Army who does an act criminal both by the military and the general law, is subject to be tried by the latter in preference to the former under certain conditions and limitations. *Opinion of April* 7, 1854, 6 Op. 413.

15. But his conviction or acquittal, by the civil authorities, of the offense against the general law, does not discharge him from responsiblity for the military offense involved in the same facts. *Ibid.*

16. Public officers are indictable at common law for acts of malfeasance in office committed in the District of Columbia. *Opinion of June* 26, 1854, 6 Op. 600.

17. No remedy exists for the case of a civilian employed by the Secretary of War to accompany an exploring and surveying expedition who has absconded to France with maps and collections which came into his possession in the State of Massachusetts, but which belong to the Government, except by ordinary action at law. *Opinion of Nov.* 7, 1854, 7 Op. 9.

18. Acts of Congress provide for the embezzlement of public money, and for that of arms, ordnance, munitions, shot, powder, habiliments, or provisions of war; but not of any other chattels belonging to the Government. In the Army and Navy, however, all acts of

malfeasance, including embezzlement, are punishable as military offenses. *Ibid*

19. T. A. R., clerk in a post-office, was indicted for purloining money from letters, but the jury on three successive trials failed to agree. On the arrest of R., bank-notes found in his possession were seized by the officer on probable suspicion of being the stolen money or the proceeds, but the same has not been identified: *Held* that if R. be acquitted or the prosecution discontinued the bank-notes must be returned to him. *Opinion of March* 14, 1855, 7 Op. 74.

20. An officer of the Navy in command, who requires the purser to pay him more money than is due him, and fails to account, is not guilty of embezzlement under any existing act of Congress. *Opinion of April* 6, 1855, 7 Op. 82.

21. Consuls not duly accounting for fees collected for consular service are subject to indictment for the statute crime of embezzlement, in the terms of the act of August 6, 1846, chap. 90, which regulates the collection, safe-keeping, and disbursement of public moneys. *Opinion of June* 2, 1855, 7 Op. 243.

22. Crimes committed on board ship on the high seas are triable in the country to which she belongs. *Opinion of Sept.* 6, 1856, 8 Op. 73.

23. A soldier who has killed a sergeant is triable by the civil courts for murder. *Opinion of Feb.* 17, 1857, 8 Op. 396.

24. The act of despatching an American vessel in ballast from a port of the United States with an immediate destination to a neutral port, and an ulterior destination, with cargo taken in at such neutral port, to a blockaded port, is an offense against the United States under section 2 of the act of July 17, 1862, chap. 195. *Opinion of July* 27, 1863, 10 Op. 513.

25. There is no impediment in the present condition of Virginia to prevent the full exercise of the jurisdiction of the civil courts in the case of Jefferson Davis. *Opinion of Oct.* 12, 1866, 12 Op. 69.

CUMBERLAND ROAD.

1. The bill recently passed by Congress (act of April 14, 1818, chap. 60) does not require reimbursement of the money therein appropriated for the Cumberland Road. *Opinion of April* 13, 1818, 5 Op. 712.

2. By force of the act of March 3, 1837, chap. 46, modifying that of July 2, 1836, chap. 264, the question whether the work in each State on the Cumberland Road shall be executed continuously or not is left to the discretion of the Secretary of War; except that, in the exercise of his discretion, he must observe the last proviso of the act of March 3, 1837. *Opinion of Jan.* 4, 1839, 3 Op. 403.

CUSTOM-HOUSE LOT AT SAN FRANCISCO.

1. A sale or abandonment of the custom-house lot at San Francisco, Cal., would work a forfeiture under the grant from the State. *Opinion of March* 19, 1868, 12 Op. 373.

2. Though the United States have the right to remove the buildings erected on the premises, yet they are obliged to maintain a fit and suitable custom-house thereon. *Ibid.*

3. The Government, by the terms of the grant, has no power to lease the property except for the purposes of carrying out the objects of the grant. *Ibid.*

CUSTOMS LAWS.

See also FINES, PENALTIES, AND FORFEITURES; SEIZURE.

I. *Generally.*
II. *Officers of Customs.*
III. *Entry of Dutiable Merchandise.*
IV. *Transportation in Bond.*
V. *Withdrawal for Exportation.*
VI. *Bonds for the Payment of Duties.*
VII. *Duties and the Collection thereof.*
VIII. *Damages on Dutiable Merchandise.*
IX. *Drawback.—Rebate.—Exemption.*
X. *Forfeitures, Penalties, and Fines.—Seizure.*
XI. *Storage.*
XII. *Distribution of Proceeds of Fines, Penalties, and Forfeitures.*
XIII. *Refund of Duties, Tonnage, etc.*
XIV. *Appeals to the Secretary of the Treasury.*

I. Generally.

1. *Semble* that the Secretary of the Treasury has no power to remit the additional duties

incurred on merchandise imported without the consular certificate required by the act of April 20, 1818, chap. 79. *Opinion of March* 31, 1820, 5 Op. 723.

2. The power to mitigate or remit penalties and forfeitures, given to the Secretary of the Treasury by the twenty-fifth section of the act of April 20, 1818, chap. 79, does not extend to the 50 per cent. which, in certain cases, is to be added to the appraisement under the provisions of that act. *Opinion of Feb.* 19, 1821, 5 Op. 730.

3. A foreign vessel with a cargo of Jamaica rum was driven into an American port for safety, and a portion of the cargo sold to pay seamen's wages and other expenses. Application was made to the Secretary of the Treasury for permission to sell the whole: *Held* that the Secretary had no power to grant the permission. *Opinion of Feb.* 24, 1821, 1 Op. 460.

4. A *bona fide* importation of goods into the Floridas after their cession to the United States, but previous to the delivery of possession thereof, was an affair between the importer and the Spanish Government, of which the Government of the United States had no right to complain; yet goods carried into a port of Florida before the delivery of possession, which remained water-borne until after delivery, and then brought into the United States in the same vessel or by transshipment into others, having never been entered in the Spanish custom-houses nor landed, nor the duties paid, would be subject to our revenue laws. *Opinion of Aug.* 20, 1821, 1 Op. 483.

5. On the requisition of the British minister, a British vessel and cargo which the master had wantonly and feloniously taken into an American port, in violation of our revenue laws, and which were there seized by the officers of the port for such violation, should be restored to an innocent owner. The forfeitures and penalties prescribed by our laws have never been inflicted on owners of vessels which have been brought within our power by others' crime. *Opinion of Nov.* 20, 1821, 1 Op. 509.

6. The bill "designating and limiting the funds receivable for the revenues of the United States" forbids the receipt of any bank notes except of such specie-paying banks as shall from time to time conform to certain conditions therein mentioned in regard to small bills, and restrains the Secretary of the Treasury from making any discrimination in this respect between the different branches of the public revenue. [The bill here referred to passed both Houses of Congress at the close of President Jackson's administration, but failed to become a law, it having been retained by him.] *Opinion of March* 3, 1837, 3 Op. 172.

7. It leaves the Secretary of the Treasury power to prohibit the receipt of particular notes, provided his prohibition apply to both lands and duties, and to direct what particular notes allowed by law shall be received, provided he can find a deposit bank which will agree to receive and credit them as cash, and not otherwise. *Ibid.*

8. The deposit banks are the sole judges of the notes to be received by them from any collector or receiver of public money, and are not bound to receive the notes of any other bank whose notes they may choose to reject; provided they apply the same rule to the United States which they apply to other depositors. *Ibid.*

9. The operation of the revenue laws, as construed by him, cannot be legally suspended by the Comptroller, even though goods may have been ordered in view of a former erroneous practice under them. *Opinion of Sept.* 8, 1838, 3 Op. 374.

10. The compromise act of March 2, 1833, chap. 55, is capable of being executed without further legislation; the regulations of the act of July 14, 1832, chap. 227, and the powers of the Secretary of the Treasury thereunder are in force. *Opinion of June* 23, 1842, 4 Op. 56; also *Opinion of June* 24, 1842, 4 Op. 63.

11. This act must be read with all the other statutes *in pari materia*, as part of a consistent and systematic whole. It only modifies those statutes so far as they may be incompatible with its own provisions. *Ibid.*

12. Collectors may withhold clearances from any vessels on which there is reason to believe live-oak or red cedar, cut from the public lands, is freighted. *Opinion of July* 15, 1845, 4 Op. 403.

13. So, also, it is their duty to prosecute for the violations of the law whenever violations come to their knowledge. *Ibid.*

14. The limitation of expenses in the collection of revenue from customs, imposed by the fourth section of the act of March 3, 1849,

chap. 110, is not applicable to the first half of the fiscal year commencing June 30, 1849. *Opinion of June* 5, 1849, 5 Op. 113.

15. The third and fourth sections of the act are to be read together, and the term "thereafter," in the proviso to the fourth section, is to be construed to apply to the period for which estimates are to be made under the third section, and not to the beginning of the coming fiscal year. *Ibid.*

16. The twenty-first section of the act of July 14, 1862, chap. 163, repeals so much of the preceding laws as entitled the owners of goods remaining in bonded warehouses beyond three years from the date of their importation to claim the surplus of the proceeds of sale of such goods. *Opinion of June* 27, 1866, 11 Op. 516.

17. The Secretary of the Treasury has no power to act upon such proceeds, as in case of a fine, penalty, or forfeiture incurred under the said act of July 14, 1862. *Ibid.*

II. Officers of Customs.

18. Collectors of customs can neither appoint nor dismiss inspectors, weighers, gaugers, and measurers without the approbation of the Secretary of the Treasury. *Opinion of Jan.* 27, 1821, 1 Op. 459.

19. It is not a breach of official duty on the part of collectors to refuse to report their reasons for removing their subordinate officers. *Opinion of April* 30, 1838, 3 Op. 325.

20. By analogy to the power of removal exercised by the President, collectors may remove their subordinates without consulting the Secretary of the Treasury, though the approbation of the latter be necessary to an appointment. *Ibid.*

21. It is competent for the surveyor of a port to depute inspectors of the customs, appointed by the collector of customs at the same port, with the approbation of the Secretary of the Treasury, to act as markers. *Opinion of June* 20, 1838, 3 Op. 331.

22. The practice that has prevailed in the enumerated ports since the act of May 7, 1822, chap. 107, relative to the employment of markers, is erroneous, as that act does not forbid the assigning to inspectors of customs such duty. *Ibid.*

23. It is the duty of collectors of customs to pay the duties collected by them into the Treasury, although some of them may have been paid under protest, and importers shall have prosecuted to recover them back. *Opinion of Dec.* 19, 1838, 3 Op. 392.

24. Where judgments shall be obtained for overcharges of duties, the Government ought to discharge them and relieve collectors of the consequences thereof. *Ibid.*

25. Collectors should adjust the duties with importers at the time of the importation, and not leave them unascertained for any considerable time, as the practice will be pernicious in its consequences. *Ibid.*

26. Collectors who are made depositaries of the public moneys under the act of July 4, 1840, chap. 41, are required to execute a new bond, with sureties, conditioned for the performance of the new duties required by said act, as well as those before required. *Opinion of July* 31, 1840, 3 Op. 584.

27. Under the act of July 4, 1840, chap. 41, all collectors of customs are required to execute bonds embracing in terms the new duties to which they are or may be subject. *Opinion of Dec.* 7, 1840, 3 Op. 600.

28. Even at ports where there is a receiver general there are some new and increased fiscal duties imposed on the collector which did not previously belong to him. *Ibid.*

29. If the proper Department shall deem it expedient, it may, in lieu of a new bond embracing all the duties of the collector, take a new bond, in a suitable penalty, embracing the new duties only, leaving the old one outstanding. *Ibid.*

30. The act of July 4, 1840, chap. 41, requires all collectors of customs to safely keep, without loaning or using, all the public money collected by them, or otherwise at any time placed in their possession or custody, till the same is ordered by the proper Department to be transferred or paid out, except as therein particularly provided; and although he is required to pay it over, the character of his responsibilities and his duties is changed, even though there be no increase of money on his hands. *Opinion of Jan.* 7, 1841, 3 Op. 610.

31. The authority of a deputy collector of customs ceases upon the removal of the collector. *Opinion of May* 11, 1842, 4 Op. 26.

32. The provision made for the continuance

of deputies, in cases of disability or death of collectors, does not apply to cases where collectors have been removed from office *Ibid.*

33. No person can be appointed to the office of permanent inspector of customs except with the approbation of the Secretary of the Treasury. *Opinion of March* 24, 1843, 4 Op. 162.

34. The only true construction, under the Constitution, of the acts providing for inspectors, is, that the name of the individual proposed to be appointed shall be submitted to the Secretary of the Treasury; and that no one shall be appointed unless approved by him. *Ibid.*

35. A collector of customs cannot remove a permanent inspector without the assent of the Secretary of the Treasury; but the Secretary of the Treasury may displace an inspector without the consent of the collector. *Opinion of March* 24, 1843, 4 Op. 165.

36. But as the collector's opinion has been required in appointing inspectors, and as his opinion has been uniformly consulted in removing them, it is too late to act on the mere *summum jus. Ibid.*

37. Collectors of customs, who are made superintendents of light-houses, may receive commissions on their disbursements. *Opinion of Nov.* 3, 1843, 4 Op. 272.

38. From January 31, 1873, to April 1, 1873, a vacancy existed in the office of the surveyor of the port of New York, during which period B., a deputy surveyor of the same port, performed the duties of the office of surveyor. B. claims so much of the proceeds of fines, penalties, and forfeitures incurred under the customs-laws within that period as would have been distributable to the surveyor had there been no vacancy in the office: *Held* that the claimant does not come within the description of persons to whom distribution of such proceeds is, by the statute (the first section of the act of March 2, 1867, chap. 188), authorized to be made, and that the claim has, therefore, no validity. *Opinion of Nov.* 28, 1873, 14 Op. 336.

39. The provision in the act of March 3, 1857, chap. 108, which authorized the appointment of an additional appraiser general (who was assigned to duty at the port of New Orleans), was repealed by force of section 5596 Rev. Stat. *Opinion of May* 9, 1877. 15 Op. 260.

40. Sections 2726 and 2728 Rev. Stat. do not, by implication, authorize the app ment of a general appraiser in addition t number authorized by section 2608 Rev. Accordingly no authority of law exists fo tinuing the office of general appraiser at Orleans. *Ibid.*

41. Officers in the revenue-cutter se being officers of the customs, belong t civil service of the United States, as c distinguished from the naval and militar are subject to removal by the President the concurrence of the Senate. *Opinion o* 13, 1877, 15 Op. 396.

42. Where the office of collector of cu is in "abeyance," the duties thereof, it remains in abeyance, may lawfully b formed by his special deputy, if there b if there be no such deputy, then by the officer, and so on, as provided in section Rev. Stat., in the order there named. *ion of Dec.* 4, 1877, 15 Op. 398.

43. The authority to exercise the du the office in that case is, however, not imp by section 2625, but by section 1769 Rev. within the terms of which latter secti above-named officers (in the order referr come, agreeably to the construction *Ibid.*

44. The duties of the office of surve customs, whilst it is in "abeyance," a section 1769 Rev. Stat., construed in c tion with section 2629, Rev. Stat., de upon such customs officer as the collector district may authorize to perform them. *ion of Dec.* 4, 1877, 15 Op. 401.

III. Entry of Dutiable Merchand

45. The Secretary of the Treasury has after an entry has been made upon an in believed by the importer to contain a true ment of the actual market value of the to permit the importer, before payment ties, to substitute another invoice, givi value, in case it appears affirmatively th second invoice truly stated the actual r value, and that such true and actual val not inserted in the original invoice by of mistake. *Opinion of July* 14, 1866, 532.

46. Section 2900 Rev. Stat. does not to an entry made in the absence of a ce invoice, upon affidavit, under the provis

sections 9 and 10 of the act of June 22, 1874, chap. 391. The terms "original invoice," employed in section 2900, mean the consular invoice only. *Opinion of Oct.* 4, 1878, 16 Op. 158.

47. Where the value in such an entry is falsely stated or concealed, with a view to defraud the revenue, this would be an offense punishable under section 12 of said act of 1874. A forfeiture would also be incurred under section 2864 Rev. Stat. *Ibid.*

48. No provision exists giving the importer a right to make an addition to the value stated in the *pro forma* invoice permitted by the act of 1874. *Ibid.*

IV. Transportation in Bond.

49. Section 2994 Rev. Stat. has no application to the transportation of *appraised* merchandise. The word "merchandise," at the commencement thereof, is limited in its signification to such merchandise as may, under the four next preceding sections (2990 to 2993, inclusive), be entered for immediate transportation to the port of final destination, without appraisement and liquidation of duties at the port of original importation. *Opinion of July* 1, 1876, 15 Op., 128.

50. Under section 2989 Rev. Stat. the Secretary of the Treasury can make no regulations other than those which may be deemed expedient and necessary for the due execution of such parts of the revenue laws as relate to warehouses. But the provisions of section 251 Rev. Stat. comprehend the making of rules and regulations for the transportation of appraised merchandise in bond from one collection district to another, and they invest the Secretary with authority over that subject as ample as that which he formerly derived under the fifth section of the act of August 6, 1846, chap. 84, and the ninth section of the act of March 28, 1854, chap. 30. *Ibid.*

51. Section 2981 Rev. Stat. does not require customs officers to recognize the lien of inland carriers upon goods transported in bond. *Opinion of July* 15, 1878, 16 Op. 74.

52. The Secretary of the Treasury has no authority, under section 2993 Rev. Stat., to protect such lien by a Treasury regulation. *Ibid.*

53. The act of March 14, 1876, chap. 23, extending "the privileges of sections 2990 to 2997 of the Revised Statutes, inclusive" (*i. e.*, the privilege of transportation in bond), to the port of Genesee, New York, is not repealed by the act of June 10, 1880, chap. 190, which repeals those sections and substitutes therefor other provisions. *Opinion of Aug.* 4, 1880, 16 Op. 548.

54. The former act conferred upon the port of Genesee a right to participate in the privileges of the class of ports mentioned in section 2997, as defined in the other sections above referred to, and as they might thereafter be defined in any subsequent legislation to be substituted therefor. Accordingly, the privileges to which that port is now entitled are those set forth in the latter act for the same class of ports (the ports designated in section 7 of the act). *Ibid.*

V. Withdrawal for Exportation.

55. Under section 2971 Rev. Stat. the owner of merchandise in public store or bonded warehouse has the right to withdraw it for exportation to a foreign country, whatever may be his object in doing so, or whatever may be the disposition he designs to make of the merchandise after it reaches its foreign destination. *Opinion of May* 5, 1875, 14 Op. 575.

56. So, by section 2979 Rev. Stat., the duty of the collector to permit such merchandise to be withdrawn and shipped without payment of duties becomes imperative when the requirements of the statute as to giving security and paying appropriate expenses are complied with by the owner, whatever may be his purpose in withdrawing the merchandise, or whatever he may intend to do with it after its arrival abroad. *Ibid.*

57. After merchandise thus withdrawn and shipped has been landed out of the jurisdiction of the United States the bond of the owner is discharged, and the merchandise itself acquires a new character relatively to our revenue laws; and if subsequently reimported it stands on the footing of an original importation. *Ibid.*

58. Hence, should goods of the same class or description happen *then* to be exempt from duty, such reimported merchandise would be equally entitled to exemption therefrom. *Ibid.*

VI. Bonds for the Payment of Duties.

59. Importers continue subject to their original liability to Government for duties, &c., notwithstanding the execution of duty bonds, which are no extinguishment of the original

liability. *Opinion of Sept.* 24, 1819, 5 Op. 718.

60. A collector may continue to receive for duties the bonds of a house unquestionably good, notwithstanding the obligor may have taken into partnership an individual whose bonds remain unpaid, but who has placed in the hands of the district attorney means ample for their payment, and has thereupon been discharged. *Opinion of July* 21, 1825, 2 Op. 5.

61. The persons referred to in the act of March 19, 1836, chap. 42, for the relief of the sufferers by fire in the city of New York, before its modification by the amendatory act of April 5, 1836, chap. 47, who, upon notice given by the collector, made returns of their losses, and tendered new bonds, which were accepted by the collector, are entitled to the full benefit of that act. *Opinion of June* 17, 1836, 3 Op. 122.

62. But those whose bonds were proffered, but not executed, prior to the passage of the amendatory act, are not entitled to the benefit of the original law. *Ibid.*

63. The Solicitor of the Treasury may grant indulgences upon custom-house bonds, in the form of instructions to district attorneys, who shall have received them for prosecution, in such cases and on such terms as shall be deemed advantageous to the United States. *Opinion of June* 27, 1837, 3 Op. 247.

64. And although the Solicitor has no jurisdiction of bonds until they are placed in the hands of district attorneys, he may, in proper cases, give the instructions conditionally in advance as to the course to be pursued. *Ibid.*

65. The collector ought not to refuse payment of a debenture certificate and in lieu thereof give credit on the extended bond, where the party to whom the certificate may have been issued received an extension of payment on bonds given to secure the duties on a subsequent importation of goods; nor where the certificate came into possession of the party by indorsement or assignment. *Opinion of July* 24, 1837, 3 Op. 279.

66. Where the authorities of Texas, after the acceptance by that republic of the terms of annexation proposed by the United States, and before the formation of a State government, required the sutlers attached to the army sent there for their protection to execute bonds for the payment of duties on supplies imported for such army: *Held* that such requirement was improper, and that the President ought to address the government of Texas requesting the duty bonds thus given to be canceled. *Opinion of Jan.* 6, 1846, 4 Op. 482.

VII. Duties and the Collection thereof.

67. Duties on goods seized with a vessel of a neutral nation and sold, but afterwards adjudged to be unlawful prize, may be lawfully exacted, and cannot be remitted by the Executive. *Opinion of April* 16, 1814, 1 Op. 176.

68. The destruction of goods by a public enemy does not release the owner from the payment of duties which have been secured according to law. *Opinion of April* 15, 1819, 1 Op. 269.

69. The fifty-sixth section of the act of March 2, 1799, chap. 22, does not authorize the collector of customs at Sag Harbor to take possession of and sell goods which were wrecked on Long Island. *Opinion of Feb.* 8, 1820, 5 Op. 721.

70. Goods imported in foreign armed ships are subject to duty. *Opinion of March* 12, 1820, 1 Op. 337.

71. The innocent purchaser of a brig under forfeiture for smuggling takes her subject to the confiscation as much as the purchaser of a stolen horse takes it subject to the claim of the true owner. *Opinion of March* 18, 1820, 1 Op. 338.

72. The *consignee* of a quantity of rum *imported* in 1816, and *afterwards* sold, is liable for the duties, and an action may be maintained against him for them. *Opinion of May* 3, 1824, 1 Op. 658.

73. Duties accrue on the importation of goods, and unless they are subject to duty at the time of importation they are not subject to duty at all. *Opinion of May* 26, 1830, 2 Op. 340.

74. The act of March 2, 1833, chap. 55, to modify the act of July 14, 1832, chap. 227, and other acts admitting silks, did not repeal the act of July 14, 1832, and former acts, which impose duties on millinery, hosiery, and ready-made clothing; and those articles, of whatever material composed, are subject to duties. *Opinion of Sept.* 8, 1838, 3 Op. 374.

75. The duty to be levied on all articles manufactured from two or more materials, without any reference to the relative value or quantity thereof, should be that which would be most beneficial to the Government were the

articles composed exclusively of any one of them. *Opinion of April* 2, 1842, 4 Op. 14.

76. A port is a place to which merchandise is imported and from whence it is exported, and comprehends the city or town which is occupied by those who are engaged in the business of importing and exporting goods, navigating the ships, and furnishing them with provisions, as well as so much of the water adjacent to the city as is usually occupied by vessels discharging or receiving cargoes or lying at anchor and waiting for that purpose. *Opinion of Nov.* 20, 1860, 9 Op. 517.

77. The functions of a collector of customs may be exercised anywhere at or within the port. He is not confined to the custom-house, or any other particular spot; but the President may direct duties to be collected on board of a vessel within the limits of the ports. *Ibid.*

78. By a provision in the charter of the Texas Cotton and Woolen Manufacturing Company, which was incorporated by the Republic of Texas in 1845, that company was exempted from paying duty on all machinery imported for its use and benefit; the legislature of the Republic reserving the right to repeal the provision after two years: *Held* that though said provision may remain unrepealed, yet, in the absence of any statute of the United States granting such an exemption, the Secretary of the Treasury cannot permit the importation of machinery by the company without the payment of duties. *Opinion of June* 21, 1870, 13 Op. 262.

79. Silk and cotton ribbons, of which silk is the component material of chief value, fall within the last paragraph of the eighth section of the act of June 30, 1864, chap. 171, and are subject to a duty of 50 per cent. *ad valorem*. *Opinion of Nov.* 1, 1872, 14 Op. 130.

80. The provisions of the joint resolution of April 29, 1864 [No. 27], and of the twentieth section of the act of June 30, 1864, chap. 171, taken together, impose the additional duty of 50 per cent. mentioned in the former enactment only on goods imported after April 30, 1864. *Opinion of May* 27, 1874, 14 Op. 653.

81. Goods in warehouse are already "imported" within the meaning of those provisions; and consequently where goods were in warehouse on the 30th of April, 1864, they were not subject to the additional duty. *Ibid.*

82. The duties imposed by the first section of the act of February 8, 1865, chap. 36, accrue on importations made on the day the act was approved. *Opinion of March* 10, 1875, 14 Op. 542.

83. Under section 2504 Rev. Stat., which imposes a duty of 1 cent per pound on "chicory-root, ground or unground," and 5 cents per pound on "chicory-root, burnt or prepared": *Held* that "chicory-root, ground" (though burnt previous to being ground), is liable to a duty of one cent a pound. *Opinion of May* 17, 1875, 15 Op. 491.

84. Merchandise which arrived at New York from a foreign port prior to March 3, 1875, but which arrived at an interior port under an immediate transportation bond without appraisement after that date, is by virtue of section 5 of the act of March 3, 1875, chapter 127, exempt from liability to the increased duties imposed by that act. *Opinion of June* 25, 1875, 15 Op. 7.

85. In such case the merchandise is to be regarded under that section the same as if the ship on which it reached the port of first arrival had continued her voyage to the port of final destination. *Ibid.*

86. Section 2504 Rev. Stat., Schedule K, re-enacts a provision of the act of March 2, 1861, chap. 68, imposing a certain duty on "timber hewn," while in the same schedule and section a provision of the act of June 6, 1872, chap. 315, is re-enacted, imposing a different duty on "timber squared or sided": *Held* that, as regards squared or sided timber hewn, the latter provision superseded the former, and that this effect remains, notwithstanding the adoption of both in the Rev. Stat.; but with respect to unsquared timber hewn, the provision taken from the act of 1861 is still in force. (Opinion of June 19, 1875, 15 Op. 493, referred to). *Opinion of Aug.* 14, 1875, 15 Op. 32.

87. Timber hewn by the natural taper of the tree, if not in the commercial sense squared, is "timber hewn" within said Schedule K. *Ibid.*

88. Velvet and ready-made clothing, in which silk is the component material of chief value, but containing cotton, flax, wool, or worsted to the extent of 25 per cent. or over in value, are dutiable at 60 per cent. *ad valorem*. *Opinion of Sept.* 27, 1875, 15 Op. 51.

89. Provisions of Schedule H in section 2504

Rev. Stat., and of section 1 in the act of February 8, 1875, chap. 36, considered and construed with reference to the duty upon the articles above described. *Ibid.*

90. Carpet wools valued at 12 cents or less per pound, exclusive of charges at the last port of shipment, are dutiable under section 2504 Rev. Stat., Schedule L, at the rate of 3 cents per pound. *Opinion of Feb.* 26, 1876, 15 Op. 72.

91. The subject of the duty on carpet wools re-examined, and the opinion of February 26, 1876 (15 Op. 72), viz, that under the law, as it is contained in section 2504 Rev. Stat. (with which is to be considered the proviso under section 2908 Rev. Stat.), carpet wools, whose value at the port of exportation, exclusive of the charges there, is not above 12 cents per pound, pay no higher rate of duty than 3 cents per pound—reaffirmed. *Opinion of March* 14, 1876, 15 Op. 76.

92. The phrase, "charges in such port," occurring in Schedule L of section 2504 Rev. Stat., does not include export duty. (*Contra*, opinion of October 23, 1876, 15 Op. 172, on re-examination of the subject). *Opinion of May* 18, 1876, 15 Op. 105.

93. Subject of the opinion of May 18, 1876, (viz, as to whether an export duty levied at the foreign port of shipment is or is not to be excluded in ascertaining the dutiable value of certain wools provided for in Schedule L of section 2504 Rev. Stat.), re-examined; and *held* that such duty is one of the "charges in such port" within the meaning of the provisions of that schedule, and should be excluded in determining the dutiable value of the wools—overruling said opinion (see 15 Op. 105). *Opinion of Oct.* 23, 1876, 15 Op. 172.

94. Paintings on glass, which rank as works of art, are subject to a duty of 10 per cent. *ad valorem* under section 2504 Rev. Stat., Schedule M, as "paintings * * * not otherwise provided for." *Opinion of Feb.* 28, 1877, 15 Op. 200.

95. Such paintings distinguished from paintings on glass which are the products of manufacture or handicraft. The latter only are dutiable under the provisions in Schedule B of that section for "paintings on glass or glasses * * * not otherwise provided for." *Ibid.*

96. The ruling of the Secretary of the Treasury in 1876 in the case of the Clark Thread Company—namely, that if a "manufacture of steel" is known to be an integral and important constituent of a machine which, when set up, will comprise a "manufacture of iron" imported at the same time, both manufactures must be assessed as *steel*, no matter that by distinct invoices, packages, and values they have been so arranged as to be readily separable by officials—is not warranted by the provisions of the statute (section 2504 Rev. Stat., Schedule E), and ought not to govern similar cases pending. *Opinion of June* 30, 1877, 15 Op. 629.

97. The regulation issued by the Secretary of the Treasury prior to the year 1875, commencing with the words, "on all articles manufactured from two or more materials," &c., is in such cases reasonable, and should be applied. *Ibid.*

98. The additional duty of 20 per cent. *ad valorem* provided by section 2900 Rev. Stat. does not accrue until, by an appraisement under that section or by a reappraisement under section 2929 Rev. Stat., it is found that the value of the goods exceeded by 10 per cent. or more their invoiced or entered value. *Opinion of July* 7, 1877, 15 Op. 335.

99. The additional duty of 20 per centum *ad valorem*, which is imposed by section 2900 Rev. Stat. by way of a penalty for undervaluations, can have no application to an undervaluation of brandy, where the brandy, being under first proof, is by appraisement worth not above $4 per gallon. *Opinion of Feb.* [illegible], 1878, 15 Op. 656.

100. An importation of goods at Plattsburgh was there appraised by the customs officers, and subsequently entered for transportation in bond to New York. Upon arrival at the latter place the appraiser re-examined the goods, and reported that the dutiable value was greater by 10 per cent. than the value at which they were entered at the port of first arrival. The matter having been submitted to the Treasury Department, the papers were referred to the customs officers at Plattsburgh, who thereupon reported the value stated by the appraiser at New York to be the correct value of the goods at the date of importation. No reappraisal was ordered by the collector at Plattsburgh, nor was any reappraisal made there either with or without notice to the importers. *Held* that the 20 per cent. additional duty mentioned in

section 2900 Rev. Stat. cannot be assessed upon the goods, the requisite preliminary steps required by the statute not having been taken. *Opinion of July* 10, 1878, 16 Op. 65.

101. Glass bottles in which importations are made, whether containing free or dutiable goods, are subject to duty, unless expressly exempted; the duty thereon being (under section 2504, Schedule B, Rev. Stat.) 30 per centum *ad valorem* where not otherwise provided for. *Opinion of Feb.* 20, 1879, 16 Op. 269.

102. Section 2504, Schedule E, Rev. Stat., providing for steel in coils, does not refer solely to the *form* in which the merchandise is imported, but is to be construed in connection with the commercial designation of the article. *Opinion of April* 30, 1879, 16 Op. 315.

103. Under that schedule (which provides that "all articles of steel partially manufactured, or of which steel shall be a component part, not otherwise provided for, shall pay the same rate of duty as if wholly manufactured") steel wire partially manufactured should pay the same rate of duty as steel wire wholly manufactured. *Ibid.*

104. In determining the duty to be assessed on ale, porter, and beer, under section 2504 Rev. Stat., Schedule D, the word "gallon," as there used, is to be understood as meaning a gallon containing 231 cubic inches, known as the wine-gallon. *Opinion of June* 25, 1879, 16 Op. 359.

105. The expression "manufactures of cotton," as used in Schedule A, section 2504 Rev. Stat., includes manufactures in which cotton is the component material of chief value. Fabrics of the latter description being thus *enumerated* articles, the similitude provision of section 2499 Rev. Stat. has no application thereto. Such fabrics are dutiable under Schedule A aforesaid. *Opinion of Oct.* 29, 1879, 16 Op. 648.

106. In classifying articles for duty the rule is that the process of enumeration must be exhausted before that of assimilation is resorted to. *Advised*, therefore, that the Treasury ruling of 1874—namely, that textile fabrics composed of silk and cotton, in which cotton is not the component of chief value, if such fabrics be substantially the same in character and uses as silk, should be classified for duty at the rate imposed upon manufactures in which silk is the component of chief value, by virtue of the similitude clause in said section 2499—be modified agreeably to the foregoing view. *Ibid.*

107. Wrought scrap-iron, consisting of punchings and clippings from iron used in the manufacture of boiler-plates, and which has never been used otherwise than in their manufacture, is not "waste or refuse iron that has been in actual use," within the meaning of the provision in Schedule E, section 2504 Rev. Stat, imposing a duty of $8 per ton on scrap-iron. Such punchings and clippings are dutiable under another provision of that schedule as iron in "forms less finished than iron in bars, and more advanced than pig-iron," &c. *Opinion of Jan.* 24, 1880, 16 Op. 445.

108. The proper rate of duty chargeable upon "cut hoops," under section 3 of the act of June 30, 1864, chap. 171 (sec. 2504 Rev. Stat.; act of March 3, 1875, chap. 127, sec. 4), considered. *Opinion of March* 5, 1880, 16 Op. 660.

109. The provision in section 2900 Rev. Stat., that the duty on imported merchandise "shall not * * * * be assessed upon an amount less than the invoice or entered value," is applicable to entries under sections 9 and 10 of the act of June 22, 1874, chap. 391. *Opinion of March* 6, 1880, 16 Op. 472.

110. Where certain cubebs, *produced* in a country east of the Cape of Good Hope, but *imported* from Rotterdam, in November, 1879, were entered at a value more than 10 per cent. below their true value: *Held* that the importation was liable to the additional duty of 20 per cent. *ad valorem* imposed by section 2900 Rev. Stat. *Opinion of May* 12, 1880, 16 Op. 677.

VIII. Damages on Dutiable Merchandise.

111. Damages received during the voyage between the foreign port and the port of arrival, by merchandise entered at the latter port for "immediate transportation" to an interior port of destination under section 2990 Rev. Stat., should be ascertained at the port of destination. *Opinion of June* 25, 1875, 15 Op. 7.

112. In the case of merchandise so entered the phrase "port where such merchandise has been landed," in section 2927 Rev. Stat., is construed to signify the port of destination; and the words in same section, "after the landing of such merchandise," are construed to mean

after the landing at the port of destination. Accordingly, the "ten days" within which proof to ascertain the damage must be lodged in the custom-house are to be computed from the landing of the merchandise at that port. *Ibid.*

IX. Drawback.—Rebate.—Exemption.

113. Saltpeter was free from duty under the laws of the United States on the 3d of May, 1803. *Opinion of March* 31, 1820, 1 Op. 345.

114. The act of 3d March, 1825, chap. 45, relative to the completion of entries for the benefit of drawback, must be construed as being prospective in its operation. *Opinion of March* 23, 1825, 1 Op. 707.

115. The application authorized by the act of March 3, 1825, chap. 45, for the benefit of drawback, may be made by the attorney in fact of the exporter, who may, under proper circumstances, make the oath and give the bond. *Opinion of Sept.* 3, 1829, 2 Op. 260.

116. Non-residents, generally, may perform by agents the acts necessary to the benefit of drawback. *Ibid.*

117. The one hundred and fifth section of the duty act of March 2, 1799, chap. 22, which is conformable to the third article of the treaty of 1794 with Great Britain, exempts from duties the proper goods and effects of Indians. *Opinion of May* 26, 1830, 2 Op. 340.

118. Under the acts of March 2, 1799, chap. 22, and January 5, 1805, chap. 4, goods may be exported for the benefit of drawback to any foreign port or place situated to the westward or southward of Louisiana, if such port or place be in the dominions of a foreign state immediately adjoining to the United States. *Opinion of March* 21, 1831, 2 Op. 417.

119. The tariff act of March 2, 1833, chap. 55, provides that all articles of manufacture which may be ascertained to be worsted shawls, worsted stuff goods, or composed of silk and worsted, shall be admitted free of duty. *Opinion of April* 22, 1839, 3 Op. 460.

120. Goods, wares, and merchandise imported prior to the passage of the tariff act of August 30, 1842, chap. 270, are entitled, upon exportation thereof, to drawback, without deducting the 2½ per cent. mentioned therein. The deduction applies only to goods subsequently imported. *Opinion of July* 31, 1843, 4 Op. 198.

121. Coffee imported from Rio Janeiro in a Danish vessel is duty free, the same as if imported in an American vessel. *Opinion of Jan.* 11, 1844, 4 Op. 301.

122. The act of March 3, 1849, chap. 110, requiring moneys received from customs, &c., to be paid into the Treasury without abatement or reduction, does not deprive goods of the benefit of drawback which were already in the country and entitled to it. *Opinion of March* 23, 1849, 5 Op. 81.

123. Its design was to take from goods thereafter to be imported the privilege of drawback when once withdrawn from the custody of the officers of the customs, and not to extinguish any existing right. *Ibid.*

124. The second *proviso* in section 3 of the act of March 3, 1875, chap. 127, relative to drawback on refined sugars, applies to all refined sugars manufactured from imported sugars, irrespective of the other provisions contained in said act. *Opinion of May* 8, 1875, 1 Op. 578.

125. Carriages previously in use by the owner are not "personal effects" within the meaning of section 2505 Rev. Stat., and are not entitled to exemption from duty by force of that section. *Opinion of June* 2, 1876, 1 Op. 113.

126. Rebate of duties, under section 2511 Rev. Stat., applies only to articles enumerated therein which enter into the construction of vessels designed to be documented for and employed in foreign trade, or in trade between the Atlantic and Pacific ports of the United States. *Opinion of June* 2, 1876, 15 Op. 114.

127. Carriages are not "household effects" within the meaning of the paragraph in section 2505 Rev. Stat., which reads "books, household effects, or libraries, or parts of libraries in use of persons," &c., and exemption from duty cannot be claimed for them thereunder. *Opinion of June* 30, 1876, 15 Op. 125.

128. In order to be entitled to drawback on fire-arms, under sections 3019 and 3020 Rev. Stat., the statute does not require that they shall have been made entirely of imported material, excepting *only* their stocks. It is sufficient if imported material has been used in their manufacture exceeding in value one half of the value of the whole of whatever kinds of material have been so used, including their stocks, the latter being made of wood or

American growth. *Opinion of Aug.* 4, 1876, 15 Op. 147.

129. Section 2793 Rev. Stat., providing for exemption from entry and clearance fees or tonnage tax, applies only to vessels engaged in the foreign and coasting trade which depart from or arrive at places established by law as ports wherefrom and whereat such vessels may be cleared and entered by the customs officials. *Opinion of Sept.* 9, 1876, 15 Op. 166.

130. An American vessel employed in the foreign trade, for the *repair* of which articles of foreign production have been withdrawn from bonded warehouse free of duty, may engage in the coastwise trade not more than two months in any one year without payment of duties on such articles. Section 2514 Rev. Stat. is to be construed with section 2513 Rev. Stat., as if it formed a part thereof. *Opinion of Sept.* 5, 1877, 15 Op. 369.

131. Where four cases containing coins, clay figures, arms, and implements of ancient origin (the coins not being arranged in "cabinets") were imported for sale by the importer in the regular course of his business: *Held* that the coins, if of gold, silver, or copper, are entitled to entry free of duty under section 2505 Rev. Stat., but that the other articles are not thus entitled. *Opinion of June* 9, 1879, 16 Op. 354.

132. The words "all other collections of antiquities," as employed in the following clause of the free-list contained in that section, viz: "Cabinets of coins, medals, and all other collections of antiquities," mean such collections as are *ejusdem generis* with the other articles mentioned in the same clause; and hence, where imported for sale, they must be of like character with coins and medals in order to be entitled to free entry. *Ibid.*

133. *Medals* are exempt from duty only when imported in cabinets. But by virtue of another clause in the same section all *coins* of gold, silver, or copper are exempt, without regard to the date of coinage, whether placed in cabinets or not. *Ibid.*

134. Photographic slides, for use in a magic lantern, imported for an institution of learning, and designed solely for the instruction of its students, are entitled to free entry. Such importation is exempt from duty by either of two provisions, viz, section 2505 Rev. Stat., exempting "philosophical and scientific apparatus, instruments," &c., and the act of June 6, 1878, chap. 156. *Opinion of May* 1, 1880, 16 Op. 486.

X. Forfeitures, Penalties, and Fines.—Seizure.

135. The case of the Olive Branch, on the facts stated, is one for the judiciary to decide. *Opinion of Aug.* 27, 1821, 5 Op. 737.

136. Her cargo is liable to duties and to the penalties if it was not a *bona fide* importation into Florida. *Ibid.*

137. If the vessel has, in all respects, complied with the various requisitions of the revenue laws applicable to such an importation as that made in the Olive Branch, no forfeiture has been incurred. *Opinion of Oct.* 2, 1821, 5 Op. 741.

138. The rights of seizing officers do not conflict with the power to remit fines, penalties, and forfeitures under the revenue laws; since, as against the United States, no such right is vested until after condemnation and the payment over to the collector of the proceeds of such fines, penalties, &c., for distribution. *Opinion of March* 17, 1830, 2 Op. 330.

139 The case considered is one in which the exercise of the pardoning power is rendered proper from the entire absence of all criminal intent in the commission of the act from whence the forfeiture arises. *Ibid.*

140. Goods imported fraudulently and collusively under cover of Indians are liable to seizure. *Opinion of May* 26, 1830, 2 Op. 340.

141. The act of May 28, 1830, chap. 147, repeals so much of the act of March 1, 1823, chap. 21, as imposes a penalty of 50 per cent. on the appraised value of goods falsely invoiced and entered by the owner at the collector's office. *Opinion of July* 10, 1830, 2 Op. 358.

142. The law which is in force at the time of entry and presentment of the invoice is that which must control the proceedings and forfeitures in consequence thereof. *Ibid.*

143. Penalties and forfeitures incurred for offenses against the act of December 31, 1792, chap. 1, "concerning the registering and recording of ships and vessels," and against the act of February 18, 1793, chap. 8, for "enrolling and licensing ships or vessels to be employed in the coasting trade," &c., may be sued for, recovered, and disposed of in the manner pro-

vided in the duty act passed on the 4th of August, 1790, chap. 35, notwithstanding its repeal. *Opinion of Nov.* 1, 1830, 2 Op. 392.

144. Under the act of March 2, 1799, chap. 22, the actual custody of goods seized belongs to the collector, not only until the libel is filed but until the question of forfeiture is adjudicated. So much of the act of May 8, 1792, chap. 36, as gave the custody to the marshal is repealed by the act of 1799. *Opinion of Dec.* 7, 1831, 2 Op. 477.

145. In legal contemplation, the goods are in the custody of the court as soon as the process is issued; and though the actual possession and care of them are committed to the collector, he holds them as the official keeper for the court, and is bound to obey its order and direction. *Ibid.*

146. The stolen jewels of the Princess of Orange brought into this country against the will of the owner are not liable to forfeiture. *Opinion of Dec.* 28. 1831, 2 Op. 482.

147. Seizures by collectors are not made pursuant to or by virtue of any judicial authority; and courts have no control over the property seized until the same is libeled. When libeled the property seized is in the custody of the courts, and is held by the collector as their officer, and subject to their direction *pendente lite. Opinion of Jan.* 7, 1832, 2 Op. 496.

148. Whenever the prosecution ceases the collector ceases to be the officer of the court; but as collector of the customs he holds the property by the same right which he exercised before the filing of the libel. *Ibid.*

149. The 50 per cent. additional duty levied on imported goods under the second proviso of the seventeenth section of the act of August 30, 1842, chap. 270, is a penalty which the Secretary of the Treasury can remit under the act of March 3, 1797, chap. 13. *Opinion of July* 7, 1843, 4 Op. 182.

150. The Secretary of the Treasury is authorized by act of the 28th of September, 1850, chap. 79, to indemnify owners of goods for damages caused by improper seizures in the districts of Upper California and Oregon. *Opinion of Jan.* 23, 1852, 5 Op. 508.

151. The authority vested in the Secretary of the Treasury by act of the 3d of March, 1797, chap. 13, to remit penalties and forfeitures in certain cases, will not authorize him to remit upon conditions which would leave the officer who seized liable to a suit for damages. *Opinion of Nov.* 24, 1852, 5 Op. 658.

152. Where a vessel was seized for violating the revenue laws, and the district judge before whom the case was brought decided in favor of the claimants, but refused the officers a certificate that there was reasonable cause for seizure: *Held* that the appeal from such decision should be prosecuted before the Supreme Court. *Ibid.*

153. If a revenue officer whose official duty it is to make seizures of property for violation of the revenue laws actually makes a seizure of merchandise while it is in his custody for the purpose of administering the customs laws, such officer is, nevertheless, to be regarded as the seizing officer. *Opinion of June* 4, 1870, 13 Op. 253.

154. Any unofficial person may seize property as forfeited to the United States, and the Government, if it chooses, may adopt the seizure and make it the basis of legal proceedings. *Ibid.*

XI. Storage.

155. Section 40 of the act of July 18, 1866, chap. 201, in providing that "all moneys received by collectors for the custody of goods, wares, and merchandise in bonded warehouses shall be accounted for as storage under the provisions of the fifth section of the act of March 3, 1841," did no more than enact what was previously required by the regulations of the Treasury Department; and the provision is simply declaratory of the law as it existed at the date of its passage. *Opinion of Feb.* 14, 1870, 13 Op. 213.

156. As to moneys received from the proprietors of private bonded warehouses, the rule as to accountability is the same whether such moneys are paid as half storage or for the attendance of a customs officer at the premises, and whether they were received before the date of the act of 1866 or after. *Ibid.*

XII. Distribution of Proceeds of Fines, Penalties, and Forfeitures.

157. Where double duties are the fruits of a compromise in a case of forfeiture, the collector prosecuting it is as much entitled to his moiety of them as he would have been to his moiety of the forfeiture which they represent. *Opinion of March* 6, 1819, 1 Op. 259.

158. The right of the officers and men of

ıe revenue cutter to a moiety of the proceeds ' the vessel seized is not impaired by the al- gation that the seizure was made within the aters of the district of Georgia. *Opinion of* eb. 5, 1820, 5 Op. 721.

159. Under the act of March 2, 1867, chap. 38, providing for the distribution of fines, enalties, and forfeitures incurred under the ıstoms laws, an officer who actually makes seizure, in consequence of orders from the ollector, naval officer, or surveyor, is entitled) the compensation provided by the statute. *pinion of Oct.* 29, 1867, 12 Op. 291.

160. In a case where there is neither an in- ormer nor a seizing officer entitled to share, istribution should be made according to the irst clause of the ninety-first section of the act f March 2, 1799, chap. 22. *Ibid.*

161. Where a distribution of the proceeds of forfeiture under the impost laws had been nade and the money paid over by a former ecretary of the Treasury, and no newly-dis- overed evidence was produced affecting the orrectness of the distribution, and no allega- ion made of fraud or willful concealment of facts: *Advised* that the present Secretary would not be justified in reopening the case on the grounds stated, as it is to be presumed that both the law and the facts were correctly de- cided by his predecessor. *Opinion of June* 4, 1870, 13 Op. 253.

162. Where a vacancy existed in the office of surveyor of the port of New York from January 31, 1873, to April 1, 1873, during which period the duties of the office were per- formed by a deputy surveyor of the same port: *Advised* that so much of the proceeds of fines, penalties, and forfeitures incurred under the customs laws within that period as would have been distributable to the surveyor had there been no vacancy in the office, if the same re- mains undistributed, should be divided equally between the collector and naval officer ap- pointed for the port or district of New York during the period above stated. *Opinion of Nov.* 28, 1873, 14 Op. 336.

163. A suit was instituted against a firm to recover a penalty for an alleged violation of the 1st section of the act of March 3, 1863, chap. 76, and while it was pending other violations of the same section by the firm were discov- ered; whereupon, to avoid further litigation, the firm sought to compromise the whole mat- ter with the Government, and a compromise was finally agreed upon, embracing not only the claim on which suit had been brought but claims in respect of the violations of law last above mentioned. By the terms of the compromise the Government was to release the latter claims, and the firm was to consent to the entry of a judgment for a certain amount in said suit. The compromise was carried into effect, and the amount of the judgment paid. On a question between adverse claimants of the "moieties" of the fund belonging to the collector and naval officer: *Held* that, in de- termining the rights of the respective claim- ants (some of whom were in office when the suit was commenced, but went out before the subsequent violations of the statute were discovered; others came into office when the former retired therefrom, and remained in until after the compromise was effected), all of the liabilities in discharge of which the money was actually paid should be taken into ac- count; that the shares of the collector and naval officer, distributable out of the money, may be divided among the respective claim- ants; and that the division may be based on the computations or estimates, in the various claims against the firm, with reference to which the amount paid was agreed upon in the compromise. *Opinion of March* 5, 1874, 14 Op. 377.

XIII. Refund of Duties, Tonnage, &c.

164. Where additional duty, imposed by the joint resolution of April 29, 1864, has been ex- acted upon goods which were in warehouse on the 30th of April, 1864, it is made the duty of the Secretary of the Treasury, by the said twentieth section, to refund them. (But see par. 165 *post.*) *Opinion of May* 27, 1874, 14 Op. 653.

165. Re-examination of the twentieth sec- tion of the act of June 30, 1864, chap. 117, in connection with the joint resolution of April 29, 1864, with reference to the subject of re- funding the additional duty mentioned in the latter enactment under the provisions of the former, considered in opinion of May 27, 1874. And *held* that the provision for refunding con- tained in said twentieth section is limited to cases in which said additional duty has been exacted on importations made upon the 29th and 30th of April, 1864; it does not apply to

cases where the duty has been exacted on goods which were imported *before* the 29th of April. View on this subject given in said opinion modified as respects the latter cases. *Opinion of July* 6, 1874, 14 Op. 672.

166. Under sections 3012½ and 3013 Rev. Stats., the Secretary of the Treasury has authority to refund to the owners of the steamers of the Norse American line (being Swedish and Norwegian vessels) plying regularly between Norway and the United States, moneys paid on account of the duties of tonnage, anchorage, buoys, and light-houses, where the payments by them to the customs-officers were exacted since the 30th of June, 1864. Where the payments were exacted prior to that date, whether these can be refunded in like manner depends upon the law as it then stood, and the practice of the Treasury Department; section 2 of the act of March 3, 1839, chap. 82, being applicable thereto. *Opinion of Oct.* 24, 1874, 14 Op. 468.

167. The first section of the act of March 3, 1875, chap. 136 (save as to what is excepted under the *provisos* therein), leaves no power in the Secretary of the Treasury to refund any moneys collected as duties on imports in accordance with any decision, ruling, or direction made or given by that officer prior to the passage of that act, unless such decision, ruling, or direction is modified or overruled as therein indicated. *Opinion of April* 7, 1875, 14 Op. 560.

168. Nor can moneys collected as duties on imports in accordance with any decision, ruling, or direction of the Secretary of the Treasury, made on or after the date of that act, be refunded or repaid, except as provided for in said first section. *Ibid.*

169. Under the second section of the same act, a decision *favorable* to the United States, which was unreversed and in force at the date of the act, must stand and be recognized by the Secretary of the Treasury as the rule to be followed upon the question involved therein, until it is reversed or modified as provided in said second section. But any decision, ruling, or direction which is *not favorable* to the United States, made by any Secretary of the Treasury prior to the date of the act, may be overruled by the present or any future Secretary of the Treasury, if in his judgment it is not a correct exposition of the law. *Ibid.*

170. Powers of the Secretary, under sections 3012½ and 3013 Rev. Stat., with reference to refunding for overpayment of duties, explained. *Opinion of June* 13, 1876, 15 Op. 119.

171. Opinions of May 27 and July 6, 1874 (14 Op. 653, 672), touching the meaning and effect of the twentieth section of the act of June 30, 1864, chap. 171, as regards the refunding of additional duties exacted under the joint resolution of April 29, 1864, reaffirmed. *Opinion of June* 15, 1876, 15 Op. 122.

172. Section 21 of the act of June 22, 1874, chap. 391, is intended to limit the time within which errors in the liquidation and payment of duties may be corrected. It has no application to claims under the provisions of section 20 of said act of June 30, 1864, for refund of additional duties exacted and paid upon importations made on the 29th and 30th of April, 1864. *Ibid.*

173. Section 1 of the act of March 3, 1875, chap. 136, instead of conferring *new* powers upon the Secretary of the Treasury in regard to the refunding of customs duties, *restricts* those already possessed by him under sections 3012½ and 3013 Rev. Stats. But cases in which the Secretary has made no ruling or decision are not within its operation. *Opinion of July* 1, 1876, 15 Op. 126.

174. Importers, before being concluded, are entitled to a ruling of the Secretary, if they have taken the proper steps to obtain it; which ruling, after it is made, can only be declared erroneous in *law* as to duties actually paid under it, by the judgment of a court. *Ibid.*

175. Section 2 of said act authorizes the Secretary, with the concurrence of the Attorney-General, to modify adversely to the United States any construction of the tariff previously adopted; but no refund can be made by him of duties which have been collected under such construction, except in pursuance of a judicial decision. *Ibid.*

176. In executing the act of March 3, 1875, chap. 136, the Secretary of the Treasury is not restricted to an application of a decision of the Supreme Court to such articles only as are *specifically* embraced therein, but may properly extend his official action to all articles within the *principle* of the decision. *Opinion of May* 29, 1878, 16 Op. 20.

177. The terms "interest and costs in judgment cases," as employed in section 3 of the

act of June 14, 1878, chap. 191, making an appropriation for the payment of certain claims originating prior to July 1, 1875, comprehend cases of suits discontinued agreeably to instructions of the Secretary of the Treasury, coming within the decisions of the Supreme Court, where the plaintiffs would have been entitled to judgments with interest and costs. In such cases interest and costs are authorized to be paid from said appropriation. *Opinion of July* 18, 1878, 16 Op. 97.

178. The Secretary of the Treasury is not authorized by the provisions of the act of June 19, 1878, chap. 318, and of section 3012 Rev. Stat., to pay interest on the amounts exacted as tonnage tax, in contravention of treaty provisions, from steamers of the Norse American Line and of the North German Lloyd's Line. *Opinion of July* 19, 1878, 16 Op. 103.

179. The act of June 19, 1878, chap. 318, does not authorize an allowance of interest on the amount of the tonnage tax unlawfully exacted. *Opinion of Feb.* 28, 1879, 16 Op. 276.

XIV. Appeals to the Secretary of the Treasury.

180. An appeal to the Secretary of the Treasury, taken under section 2931 or 2932 Rev. Stat., is determined when the Secretary, having arrived at a conclusion either favorable or adverse to the appellant, makes known his decision to the official in his Department charged with the matter of the appeal. The Secretary is not bound to give notice of his decision to the appellant; the latter must inform himself thereof at his peril. *Opinion of June* 13, 1876, 15 Op. 119.

181. Suit may be instituted by appellant without having first obtained a decision from the Secretary, if decision on his appeal is not made within the times specified in said sections. The ninety days within which suit must be brought begin to run from the date of the decision where the duties are paid before the decision, and from the date of payment where the duties are paid after the decision. *Ibid.*

182. Where protests and appeals have been filed, and recognized as valid when filed, at a different time or in a different manner than that required by section 2931 Rev. Stat., by the mutual error of the customs officers and of the importer, it is not competent to the Treasury Department to recognize such protests and appeals as valid. *Opinion of Oct.* 31, 1878, 16 Op. 198.

183. It is for the person entering the goods to see that the proper steps are taken to protect his right to prosecute his claim for a refund of duties if he desires such refund, and a mistake made by the customs officers or the Department cannot place him in such position that he can maintain an action without complying with the requirements of the law. *Ibid.*

184. Suggestions in regard to the disposition of cases wherein the requirements of the law have been neglected, and in which suits have been commenced, but were afterwards discontinued upon the understanding that the Department would proceed to refund duties found to have been illegally collected. *Ibid.*

185. In view of the apparent conflict of opinion as to the time when protests and appeals in customs cases should be filed under section 2931 Rev. Stat., between the decision in the later case of *Keyser* v. *Arthur* (per Judge Shipman), in the United States circuit court for the southern district of New York, and the decision in the case of *Watt* v. *United States* (per Chief Justice Waite), in the same court, to which last-mentioned case reference is made in the opinion of the Attorney-General on the same subject, of October 31, 1878 (16 Op. 198), no objection is perceived to the Treasury Department following the rule that it has heretofore adopted in regard to protests and appeals in such cases. But it is a question for the Supreme Court finally to determine, whether papers filed agreeably thereto constitute a protest and appeal within the meaning of the statute and can be treated as filed within the time required by the statute. *Opinion of June* 11, 1879, 16 Op. 355.

DAMAGES.

See also CLAIMS, VII; CONTRACT, VI; CUSTOMS LAWS, VIII; POSTAL SERVICE, II.

1. The President has no power to afford pecuniary redress to a party who alleges abuse of power against him by the attorney of the United States for one of the Territories. *Opinion of March* 23, 1854, 6 Op. 392.

2. In the case of a contract with the Government rescinded for lawful cause, but without fault on the part of the contractor, the latter has no right to vindictive damages, or to any collateral or consequential damages; nor is he entitled to damages in the rate of the contract as if completely performed by him; but the true measure of damages, whether in equity or law, is the actual value of the contract *per se*, and the actual loss of its nonperformance. *Opinion of June* 7, 1854, 6 Op. 516.

3. The Comptrollers and Auditors of the Treasury have no general authority to award damages as for tort, on contract broken; their jurisdiction is confined to matters of account arising *ex contractu* or by operation of law. *Ibid.*

4. The extraordinary expenses of a party incurred in living at St. Mary's, whither he retired after the destruction of his property in Florida, are a matter too remotely consequential to be the proper subject of damages under the 9th article of the treaty of 1819 between the United States and Spain. *Opinion of June* 8, 1854, 6 Op. 530.

5. Damages on the rescission of a mail contract by the Postmaster-General cannot be allowed beyond the actual loss to the party. *Opinion of June* 19, 1855, 7 Op. 286.

6. In the case of a post-office contract, canceled by the Postmaster-General, it is in the option of the other party to take the one month's extra allowance provided by the contract, or to claim damages at large; but if he elect to accept the former, that is a legal waiver of the latter. *Opinion of Sept.* 8, 1855, 7 Op. 487.

7. The acceptance by a mail contractor, on the rescission of his contract by the Postmaster-General, of the month's extra compensation stipulated for such case in the contract, is a waiver of all claim for other damages. *Opinion of March* 3, 1856, 7 Op. 644.

8. Question of damages on a special contract between the War Department and the master of the bark Kilby. *Opinion of Feb.* 23, 1857, 8 Op. 401.

9. Mode of ascertaining damages to property under the act of July 20, 1868, chap. 184, which provides for the right of way over lands needed for the construction of the canal around the Des Moines Rapids of the Mississippi River, stated. And upon the assumption that the pipes through which claimant deriv ply of water were laid and in use o before the acquisition of the right o the same: *Held* that the direct an loss or injury which he would nece tain by the construction of the can compelled to remove and relocate stituted a proper element of charge, the value of the land, in estimatin pensation for such right of way. *April 7*, 1873, 14 Op. 214.

DEED.

1. The delivery of a deed is a con act, by which, and from the time c takes effect and operates. Its de be before or after its date. An subsequent date, or no date, is ma as proof of a delivery; until which t no deed. But *prima facie*, every d interpreted to be delivered on the date, and to be made fairly and in The presumptions are, however, c by proof. *Opinion of March* 26, 108.

2. Delivery is a matter *in pais*, dispensable requisite, to be establi dence foreign from the date of t anything contained in it. *Ibid.*

3. A deed of land by a corporati under the seal thereof. *Opinion of* 8 Op. 440.

4. Degree of certainty requisite scription of lands conveyed by dee *of Aug.* 26, 1855, 8 Op. 451.

5. In a deed to the United Stat consideration should be stated. *Aug.* 28, 1866, 12 Op. 18.

DEMURRAGE.

1. Demurrage may be either *ex ex delicto;* in either case it is a fixed upon the deliberate consider the circumstances attending the ings and expenditures of a ship voyages; and has reference to he such as wages and provisions, wea and common employment. *Opini* 1854, 6 Op. 285.

2. In the case of delay of a ship employed in the transportation of troops for the United States, under circumstances which would be demurrage in ordinary contracts of affreightment, the Secretary of War may allow compensation in the nature of demurrage or by implied contract of the Department. *Ibid.*

DEPARTMENT OF JUSTICE.

See ATTORNEY-GENERAL; EXECUTIVE DEPARTMENTS.

DEPOSIT OF PUBLIC FUNDS.

1. An agent of the Government cannot require it to receive the credit of a bank, or any other third party, in the place of that of himself and his sureties. *Opinion of Feb.* 27, 1854, 6 Op. 314.

2. A bank cannot lawfully take public funds which had been deposited with it, knowing them to be such, and divert them from a public debt to the payment of the private debt of the public agent, or to a debt contracted by him in violation of law and of his duty to the Government. A debtor, in paying money to a bank, has the right to prescribe to which of two existing debts it shall be credited. *Ibid.*

3. Where a disbursing agent of the United States had paid public money into a bank, the Government will not undertake to settle incidental matters of controversy between him and the bank, but leaves all such questions to the courts of justice. *Ibid.*

DERELICT.

The Secretary of the Navy has not authority, in all cases, to direct distribution of the proceeds of cotton found floating at sea and picked up by vessels of the Navy. *Opinion of Nov.* 20, 1863, 11 Op. 2.

DESCENT.

1. Surviving sisters of the half-blood of deceased soldiers, who, at their demise, were entitled to bounty lands from the Government, are equally entitled with the brothers and sisters of the whole blood to receive such bounty, or the money in its stead. *Opinion of Sept.* 7, 1848, 5 Op. 26.

2. Where money is due from the Government to the heirs of one deceased, and there is dispute as to the legal descent, the latter question should be decided by the court rather than by the executive officers. *Opinion of Jan.* 28, 1853, 5 Op. 670.

DESERTION.

See LIMITATION, II; SEAMEN.

DEVISE.

Where there is devisee for life in possession, the question, who shall take the remainder, is contingent upon the state of facts which shall exist at the death of such devisee. *Opinion of April* 29, 1854, 8 Op. 446.

DIPLOMATIC AND CONSULAR OFFICERS.

See also COMPENSATION, II.

I. *Ambassadors, other Public Ministers, &c.*
II. *Consuls, Vice-Consuls, Commercial Agents, &c.*

I. Ambassadors, Other Public Ministers, &c.

1. The house of a foreign minister cannot be made an asylum for a guilty citizen, nor (it is apprehended) a prison for an innocent one; and, though it be exempt from the ordinary jurisdiction of the country, yet in such cases recourse would be had to the interposition of the extraordinary powers of the state. *Opinion of June* 24, 1794, 1 Op. 47.

2. An ambassador is not liable in any case, according to the law of nations, to answer, either criminally or civilly, before any court of the foreign nation to which he is sent. Conformable to this principle is the 25th section of the act of April 30, 1790, chap. 9. *Opinion of July* 27, 1797, 1 Op. 71.

3. An ambassador or other representative of one foreign nation residing in another is en-

titled to be treated with respect so long as he is permitted to continue in the country to which he is sent, and especially ought not to be libeled by any of the citizens. If he commits any offense, it belongs, in our country, to the President of the United States to take notice of it, and not to any individual citizen. The President may dismiss him, or desire his recall, or complain to his sovereign and require satisfaction. *Ibid.*

4. An affront to an ambassador is just cause for national displeasure, and, if offered by an individual citizen, satisfaction is demandable of his nation. It is not usual for nations to take serious notice of publications in one nation containing injurious and defamatory observations upon the other; but it is usual to complain of insults to their ambassadors, and to require the parties to be brought to punishment. *Ibid.*

5. A foreign minister here should correspond with the Secretary of State on matters which interest his nation, and ought not to be permitted to do it through the press in our country. His intercourse is to be with the Executive of the United States only upon matters that concern his mission or trust. He has no authority to communicate his sentiments to the people of the United States by publications, either in manuscript or print, which he shall write and circulate while resident among us. Such conduct would be a contempt of the Government, for which he would be reprehensible by the President. *Opinion of July* 27, 1797, 1 Op. 74.

6. There is no provision in the Constitution, nor in any law or treaty, which reaches the case of an insult to the Spanish minister. *Opinion of May* 12, 1802, 5 Op. 691.

7. The entry into a minister's garden by the agent of the owner of a slave, and there seizing and carrying away such slave to the owner, is not such a violation of the domicil of the minister as constitutes an offense. The immunities of a minister's domicil cannot extend to his garden. *Opinion of May* 9, 1804, 1 Op. 141.

8. The certificates of foreign ministers do not seem to compose a part of the regular papers with which a ship is usually furnished for the protection of herself and cargo. *Opinion of July* 20, 1807, 1 Op. 162.

9. The President being intrusted with the subject of the diplomatic intercourse of the United States with foreign nations, may, in his discretion, advance money to a minister going abroad over and above his outfit. *Opinion of June* 15, 1829, 2 Op. 204.

10. Mr. Barrozo Pereira, the Portuguese chargé d'affaires, was, on the 30th of October, 1829, entitled to the respect and immunities of a public minister, notwithstanding the assumption of regal power in Portugal of Don Miguel in exclusion of Don Pedro. *Opinion of Nov.* 3, 1829, 2 Op. 290.

11. The change which had occurred in the political condition of his country was not yet consummated. The uncertainty which induced him to suspend instead of terminating his functions was the same uncertainty which delayed the recognition by the United States of the existing Government of Portugal. Until that was done, it could not consider as valid any act of that Government affecting Mr. Barrozo; and his own act, unnoticed as it was by this Government; was open to the explanation which he gave of it. *Ibid.*

12. The minister to Madrid is not entitled to charge for office rent, although similar charges have been allowed to our ministers to London and Paris, the same not being warranted by law, nor having been the usage of the Government. *Opinion of Aug.* 5, 1831, 2 Op. 453.

13. Where the chargé d'affaires to New Grenada was authorized to draw upon the Barings for his salary, and such drafts brought a premium: *Held*, that he was chargeable with such premium, and must be considered to hold it in trust for the Government. *Opinion of Dec.* 26, 1843, 4 Op. 295.

14. The Government was bound to pay the minister a stipulated salary of $4,500 per annum, and, being thus liable, it was bound to make that amount available to him at his foreign residence; yet if, in the fiscal arrangements to make such salary available, he receive more than his due, he is bound to account for it. *Ibid.*

15. The persons and household goods of foreign ambassadors, and those attached to their respective legations, are exempt from lawful arrest, seizure, or molestation, as well by the law of nations as the act of April 30, 1790, chap. 9. *Opinion of Feb.* 13, 1849, 5 Op. 69.

16. It is therefore unlawful for the keeper of a hotel in Washington with whom the attaché of the legation of France is a boarder to

oppose by force, in any manner, the removal therefrom of any of his personal effects. *Ibid.*

17. Yet it is not incumbent on the Secretary of State to interfere in such cases. The act of Congress which forbids the act and prescribes the penalty refers them to the judiciary. *Ibid.*

18. A minister to a foreign government is entitled to an outfit not exceeding one year's salary, though he were not in the United States at the time of his appointment. *Opinion of July* 20, 1849, 5 Op. 139.

19. The appropriation act of March 3, 1849, chap. 100, takes from the President any discretion as to the amount, and requires a full outfit to be paid Mr. Donelson, the claimant in this case. *Ibid.*

20. A minister of the United States to the republic of Mexico is entitled, under the acts of May 1, 1810, chap. 44, and March 3, 1847, chap. 47, to an outfit of $9,000, although he was not in the United States at the time of his appointment. *Opinion of Oct.* 8, 1849, 5 Op. 163.

21. The expression "ambassadors and other public ministers," which occurs three times in the Constitution, must be understood as comprehending all officers having diplomatic functions, whatever their title or designation. *Opinion of May* 25, 1855, 7 Op. 189.

22. "Ambassadors," by the public law of Europe, enjoy the highest privileges, because of the pretended or putative direct relation of the ministers of this name to their sovereign; but the imperial or regal sovereignty of a European monarchy neither has nor can have any public right in this respect, which does not equally belong to the popular sovereignty of a republic like the United States. *Ibid.*

23. The Commissioner of the United States in China, while he is a diplomatic officer by the law of nations, is also a judicial officer by treaty and by statute. *Ibid.*

24. The provision of the act of March 1, 1855, chap. 133, which contemplates the appointment only of an envoy extraordinary to China, is imperfect; for although the first minister of the United States, in China, held those two distinct commissions, yet a repetition of that fact at this moment would not be compatible with the diplomatic relations at present existing between the United States and China. *Ibid.*

25. It was the practice of the Spanish crown, during the reigns of Charles I and his successors of the Austrian dynasty, to delegate to Spanish viceroys, governors, and captains-general, the *jus legationis* as well in Europe as in Asia and America; and that delegation was recognized by the public law of Europe. *Opinion of Oct.* 16, 1855, 7 Op. 551.

26. According to the public law of the monarchies of Europe, the authority of ministers, and perhaps of international commissioners, expires on the death, deposition, or abdication of the prince; but not so as between the American republics, in which the executive power is permanent and continuous, without regard to the governing person, and there is no interruption of the authority or renewal of the credentials of their public ministers on a change of President for whatever cause, provided such President continues to represent and exercise the appointing power of the Government. *Opinion of Oct.* 29, 1855, 7 Op. 582.

27. The United States observe, as their rule of public law, to recognize Governments *de facto*, and also governing persons *de facto*, without scrutiny of the question of legitimacy of origin or accession. *Ibid.*

28. Hence, in this case, the Mexican commissioner, Mr. Salazar, being duly appointed by President Santa Anna, continued to be competent to act after the sequent accession of President Carrera, and his official agreement, signed then, if otherwise regular and complete, definitively establishes the line as respects the Mexican republic. *Ibid.*

29. A person coming to this Government as the pretended diplomatic minister of a foreign state, and not recognized or received as such, has no diplomatic privilege except of transit, and that by comity, not of right; which qualified privilege is subject to be withdrawn from him, leaving him amenable to the municipal law, if he engage in or contemplate any act not consonant with the laws, peace, or public honor of the United States. *Opinion of Dec.* 24, 1855, 8 Op. 471.

30. A person claiming to be the diplomatic agent of a foreign Government, but not recognized as such, discharged from prosecution for unlawful recruiting on condition of leaving the United States. *Opinion of Dec.* 27, 1855, 8 Op. 473.

31. Ministers in office and receiving aug-

mented salary, according to the provisions of the act of March 1, 1855, chap. 133, as amended by the act of August 18, 1856, chap. 162, are subject to the conditions of that act as to residence. *Opinion of Aug.* 30, 1856, 8 Op. 69.

32. If a slave, employed by the representative of a foreign Government, without the owner's authority, be reclaimed by the owner with or without legal process, the reclamation is not a breach of diplomatic privilege. *Opinion of Mar.* 30, 1857, 9 Op. 7.

33. For injuries done by private persons to the representatives of foreign Governments, the Government of the United States affords redress through its judicial tribunals. *Ibid.*

34. The Executive Department has no power to redress such injuries. *Ibid.*

35. The absence of a minister resident from his post, with permission of the President, is not an offense for which his salary, during the time of the absence, is to be withheld from him. *Opinion of April* 27, 1858, 9 Op. 138.

36. The act of August 18, 1856, chap. 127, does not forbid an absence of less than ten days without permission, or of more than that time with leave of the President. *Ibid.*

37. A secretary of legation is lawfully authorized to act as charge d'affaires *ad interim* whenever he assumes the duties of that office in a manner warranted by public law, diplomatic usage, and the general instructions of the Department of State. *Opinion of May* 3, 1860, 9 Op. 425.

38. When legally authorized to act in that capacity, he is entitled, under the act of August 18, 1856, chap. 127, to receive the pay of a charge d'affaires. *Ibid.*

39. A minister plenipotentiary from the United States to a foreign power cannot, without the consent of Congress, accept a similar commission from a third power; though he is not prohibited from rendering a friendly service to a foreign Government, even that of negotiating a treaty, provided he does not become an officer thereof. *Opinion of Nov.* 23, 1871, 13 Op. 537.

II. Consuls, Vice-Consuls, Commercial Agents, &c.

40. A consul is not considered a public minister, because he is not in any degree invested with the representative character; and he is not entitled to the privileges attached to the person of such an officer. The Constitution of the United States distinguishes between them, where it extends the judicial power "to all cases affecting ambassadors, *other public ministers*, and consuls"; and the same distinction is also observed in the 13th section of the judiciary act of September 24, 1789, chap. 20. *Opinion of Feb.* 20, 1794, 1 Op. 41.

41. A riot before the house of a foreign consul by a tumultuous assembly requiring him to give up certain persons supposed to be resident with him, and insulting him with improper language, is not an offense within the act of 30th April, 1790, chap. 9, for the punishment of certain crimes against the United States, and cannot be prosecuted in the courts of the United States. *Ibid.*

42. A consul is not, as such, privileged from legal process by the law of nations, nor is the French consul-general by the consular convention of 1788 between the United States and France. *Opinion of Nov.* 21, 1797, 1 Op. 77.

43. Though the transaction which gave rise to the suit instituted against the French consul-general was not of a private character, but of a public nature, and one in which he acted as agent of his Government, yet the President of the United States has no constitutional right to interpose his authority, but must leave the matter to the tribunals of justice. *Ibid.*

44. A consul of the United States for Tunis, with instructions from the Department of State authorizing him, if he could find a suitable channel through which to negotiate the immediate release of the American prisoners at Algiers, to go as far as three thousand dollars per man, employed an agent, by promise of reward, to effect the object, and then drew bills on the State Department for such compensation, and for money paid, &c., in favor of a merchant at Gibraltar: *Held*, that the employment of an agent was justified under the power, but that the true meaning of the instructions was lost sight of by the manner of the employment of the agent for a compensation. *Opinion of Dec.* 30, 1816, 1 Op. 196.

45. It is not essential to the validity of a consular bond that it should be attested. *Opinion of June* 30, 1820, 1 Op. 378.

46. Foreign consuls and vice-consuls are not public ministers within the law of nations or

the acts of Congress, but are amenable to the civil jurisdiction of our courts. *Opinion of Dec.* 1, 1820, 1 Op. 406.

47. But consuls are bound to appear only in the Federal courts; the Constitution and laws, contemplating the responsibility of consuls, having provided these tribunals, in exclusion of the State courts, in which they shall answer. *Ibid.*

48. Consular jurisdiction depends on the general law of nations, existing treaties between the two Governments affected by it, and upon the obligatory force and activity of the rule of reciprocity. *Opinion of Sept.* 8, 1830, 2 Op. 379.

49. French consular jurisdiction in an American port depends on the correct interpretation of the treaties existing between his most Christian Majesty and the United States, and which limit it to the exercise of police over French vessels, and jurisdiction in civil matters in all disputes which may there arise, and provide that such police shall be confined to the interior of the vessels, and shall not interfere with the police of our ports where the vessels shall be. They also provide that in cases of crimes and breaches of the peace the offenders shall be amenable to the judges of the country. *Ibid.*

50. The claim of the French envoy, therefore, for the exercise of judicial power by the consul of his Government in the port of Savannah, is not warranted by any existing treaties, nor by a rule of reciprocity which the Executive has power to permit to be exercised. *Ibid.*

51. The Executive will pay to the widow of a consul, having a salary, who has died in office abroad, upon her return, the amount which it has been customary to pay to consuls themselves upon their recall, viz, his salary for three months. *Opinion of May* 31, 1832, 2 Op. 521.

52. The funeral expenses of the deceased consul, and the incidental and contingent expenses of the consulate after his death, are a fair item of charge on the fund for the contingent expenses of foreign intercourse. *Ibid.*

53. And where the son of the deceased consul remains at the port and discharges duties of consul, which are recognized by the Government, he may receive the compensation fixed by law for such services. *Ibid.*

54. Foreign consuls in the United States are entitled to no immunities beyond those enjoyed by foreigners coming to this country in a private capacity, except that of being sued and prosecuted exclusively in the Federal courts. *Opinion of Sept.* 16, 1835, 2 Op. 725.

55. If any foreign consul shall be guilty of any illegal or improper conduct, he will be liable to the revocation of his exequatur, and to be punished according to our laws, or he may be sent back to his own country, at the discretion of our Government. *Ibid.*

56. Consuls have no authority to order the sale of a ship in a foreign port, either on complaint of the crew or otherwise. *Opinion of July* 24, 1854, 6 Op. 617.

57. If, on such sale, a consul retains money for the payment of seamen's wages, he acts at his own peril, and is responsible to the owners. *Ibid.*

58. The United States are not responsible in damages for moneys illegally received by consuls, or for any other act of malfeasance of theirs in office. *Ibid.*

59. Consuls of the United States have no lawful authority as such to solemnize marriages in countries comprehended within the pale of the international public law of Christendom. *Opinion of Nov.* 4, 1854, 7 Op. 18.

60. *Secus*, in countries not Christian, where by convention or in fact the rights of exterritoriality are possessed by citizens of the United States. *Ibid.*

61. Consuls are officers created by the Constitution and the laws of nations, not by acts of Congress. *Opinion of June* 2, 1855, 7 Op. 243.

62. All the provisions of the act of March 1, 1855, chap. 133, regarding the duties of consular officers take effect on the 1st of July, 1855. *Ibid.*

63. The penalty of removal from office, which the act affixes to the non-performance of some duties by consuls, is inoperative, because removal from office cannot be enacted as a statute penalty, it being a matter for the Constitutional discretion of the President. *Ibid.*

64. Consuls not duly accounting for fees collected for consular service are subject to indictment for the statute crime of embezzlement, in the terms of the act of August 6, 1846, chap. 90. *Ibid.*

65. In taking charge of the estates of citizens of the United States dying abroad, the power of consuls is limited to collecting the assets abroad, discharging them of local liabili-

ties, reducing them to money, and transmitting to the Treasury, subject to the orders, both before and afterwards, of the lawful executor or administrator. *Ibid.*

66. Consuls-general are the proper persons to hold consular posts in the capitals of the great transmarine dependencies of European powers, and to constitute the medium of communication with the local governor or captain-general, and are appointable at the discretion of the President with the consent of the Senate. *Ibid.*

67. A consul may be authorized to communicate directly with the Government near which he resides; but he does not thereby acquire the diplomatic privileges of a minister. *Opinion of July* 14, 1855, 7 Op. 342.

68. Nor does he, *as consul*, acquire such privileges by being appointed, as he may, at the same time chargé d'affaires. *Ibid.*

69. To the question whether a consul can solemnize marriage or not, as consul, it is wholly immaterial whether he be or not a subject of the foreign Government. *Ibid.*

70. The exterritoriality of foreign consuls in Turkey and other Mohammedan countries is entirely independent of the fact of diplomatic representation, and is maintained by the difference of law and religion; being but incidental to the fact of the established exterritoriality of Christians in all countries not Christian. *Ibid.*

71. Consuls, as international commercial agents, originated in the colonial municipalities of the Latin Christians in the Levant, which municipalities were self-governing through their "consuls," the ancient title of municipal magistrates in Italy. *Ibid.*

72. Rights of private exterritoriality having ceased to exist in Christendom, foreign consuls have ceased, mostly, to be municipal magistrates of their countrymen there; but they still continue not only international agents, but also administrative and judicial functionaries of their countrymen in countries outside of Christendom. *Ibid.*

73. Foreign consuls have no right, on the trial of a person whose acts affect them as accomplices, to interpose by letter; but may appear as witnesses or by counsel in aid of the defense of the party indicted. *Opinion of Sept.* 17, 1855, 8 Op. 469.

74. In virtue of the treaty of 1844 between the United States and China, all citizens of the United States in China enjoy complete rights of exterritoriality, and are amenable to no authority but that of the United States. *Opinion of Sept.* 19, 1855, 7 Op. 496.

75. The act of Congress empowers the commissioners and consuls of the United States in China to exercise judicial authority over their fellow-citizens. *Ibid.*

76. The several consuls, each in his consular circumscription, have, by express provision of statute, original jurisdiction in all civil cases of contract, or the like sounding in damages, which arise between two or more citizens of the United States, and in all crimes committed by an American. *Ibid.*

77. In such civil matters of contract, or the like sounding in damages, the consul sits with or without assessors, according to circumstances; and in case of difference of opinion between him and his assessors, an appeal lies to the commissioner. *Ibid.*

78. In all criminal matters, except certain petty misdemeanors, the consul sits with assessors, and decides subject to appeal as in civil cases to the commissioner. Save that in capital cases, there is no appeal, but the conviction is invalid unless approved by the commissioner. *Ibid.*

79. In controversies between citizens of the United States and subjects of China, the case is to be tried by the court of the defendant's nation; and so in controversies between citizens of the United States and those of any friendly foreign government. *Ibid.*

80. The consular court has no authority by the treaty or the statute to entertain jurisdiction of a suit by the Chinese Government for duties. *Ibid.*

81. In all criminal matters, and in all civil matters of contract, or the like sounding in damages, the commissioner has only appellate jurisdiction. *Ibid.*

82. As to all other matters, such as probate of wills, divorce, intestacy, copartnership, chancery, admiralty, proceedings *de re* or *in rem*, personal or prerogative writs, division of lands, and the like, the statute makes no specific provision, leaving them to regulations of the commissioner and consuls. *Ibid.*

83. Vice-consuls are competent to act, when duly appointed or approved as such by the Secretary of State. *Ibid.*

84. The face of a banker's circular letter of credit, found in the possession of an American dying abroad, is not assets to that amount to be administered by the consul. *Opinion of Oct.* 10, 1855, 7 Op. 542.

85. Citizens of the United States, who hold foreign consulates in the United States, are not exempt from jury duty or service in the militia by the law of nations, or by the Constitution and laws of the United States, nor unless exempted by the statutes of the State of the Union in which they may respectively reside. *Opinion of Nov.* 3, 1856, 8 Op. 169.

86. Consuls of the United States in foreign countries are required to see to persons charged with the commission of crimes at sea or in port under circumstances giving jurisdiction to the courts of the United States, and have authority to send such persons home for trial, and in that view to inquire into the facts of the alleged crime. *Opinion of Feb.* 11, 1857, 8 Op. 380.

87. But the authority of the consul in such case is ministerial, not judicial, in its nature. *Ibid.*

88. Under the act of August 11, 1848, chap. 150, the United States consuls in Turkey have judicial powers only in criminal cases. *Opinion of March* 16, 1859, 9 Op. 296.

89. An American consul, under the act of February 28, 1803, chap. 9, has no authority, by withholding a ship's papers, to compel payment of demands for which suit has been brought by a creditor, after her release in bond by the court. *Opinion of Aug.* 6, 1859, 9 Op. 384.

90. Such consul, under the twenty-eighth section of the act of August 18, 1856, chap. 127, has authority to detain the papers of a ship to enforce only the payment of wages in certain cases and consular fees; but he has not a general power of deciding upon all manner of disputed claims against American vessels. *Ibid.*

91. Such consul may receive the penalties incurred by the master of a vessel for neglecting to deposit his papers in a court of competent jurisdiction, but he has no right to enforce otherwise the payment of the penalties. *Ibid.*

92. An American consul in a foreign port has no power to retain the papers of vessels which he may suspect are destined for the slave trade. *Opinion of May* 3, 1860, 9 Op. 426.

93. No more than fifty cents can be charged for certifying invoices, and for certifying the place of growth or production of goods made duty free by the reciprocity treaty with Great Britain, although such certificate may be accompanied by an attestation of the official character of a magistrate and of the value of the goods. *Opinion of July* 16, 1860, 9 Op. 441.

94. Consuls, as well as consular officers and agents, are subject to this restriction. *Ibid.*

95. It applies to all the British North American Provinces included in the reciprocity treaty. *Ibid.*

96. A United States consul whose salary exceeds $2,500 is entitled to be paid his fees as commissioner for taking depositions in an admiralty proceeding in a United States district court. *Opinion of Oct.* 16, 1860, 9 Op. 496.

97. The penal provisions of the seventeenth section of the act of August 18, 1856, chap. 127, only apply to the taking of greater fees than are allowed by the act itself, and do not therefore extend to the taking of greater fees than are allowed by the third section of the act of March 3, 1859, chap. 75. *Opinion of Nov.* 22, 1860, 9 Op. 500.

98. No law or regulation requires an American consul to certify to the official character and acts of a foreign notary public. *Opinion of Aug.* 1, 1866, 12 Op. 1.

99. Consuls of the United States are authorized by the twenty-fourth section of the act of August 18, 1856, chap. 127, to perform any notarial acts; but a certificate as to the official character of a foreign notary is not a notarial act. *Ibid.*

100. The third section of the act of July 25, 1866, chap. 233, is limited to unsalaried consuls and commercial agents. *Opinion of Nov.* 22, 1866, 12 Op. 97.

101. Consular agents are entitled to the compensation allowed them under the fifteenth section of the act of August 18, 1856, chap. 127. *Ibid.*

102. The fees of consular agents receivable under the act of 1856 are not returnable in the accounts of the consuls to whom they are subordinate under the act of 1866. *Ibid.*

103. The fees collected by consular agents which are payable under the act of 1856 to their principals are returnable in the accounts of such principals. *Ibid.*

104. The act of February 28, 1867, chap. 99,

forbidding the payment of compensation to any consul or commercial agent of the United States who is not a citizen of the United States, does not apply to deputy consuls, consular agents, vice-consuls, and vice-commercial agents. *Opinion of March* 6, 1867, 12 Op. 124.

105. Consuls may retain $1,000 out of the aggregate moneys received from consular agencies or vice-consulates. *Opinion of Nov.* 21, 1868, 12 Op. 527.

106. The action of a consul, in the exercise of the discretion given him by sections 4580, 4581, 4583, and 4584, respecting the discharge of seamen in a foreign port, is not reviewable otherwise than by some competent court. *Opinion of Feb.* 20, 1879, 16 Op. 268.

107. Where a consul has collected extra wages of the master of a vessel in a foreign port, or requested collection of such extra wages on the arrival of the vessel in the United States, it is not competent to the Secretary of the Treasury or any bureau of the Treasury Department, in the examination of the accounts of the consul, to do anything more than revise the amount of the collection and determine its arithmetical accuracy. *Ibid.*

DIRECT-TAX LAW.

1. Under the acts of July 22, 1813, chap. 16, and January 9, 1815, chap. 21, minors have the right to redeem their lands sold for direct taxes at any time within two years from the removal of the disability by payment of the purchase money with 10 per cent. thereon, and compensation for improvements, whether deeds have been given to the purchasers or not; for no deed is valid unless given in pursuance of law, and the law does not authorize the giving of a deed until the time of redemption shall have expired. *Opinion of July* 3, 1820, 1 Op. 378.

2. Where lands liable for a direct tax are not divisible the whole must be sold. *Opinion of Aug.* 10, 1820, 1 Op. 401.

3. Lands sold therefor may be redeemed by the former owners within two years upon payment of the amount paid by the purchaser with 20 per cent. interest. *Ibid.*

4. Property cannot lawfully be sold for direct taxes while in the custody of the marshal under proceedings for confiscation. *Opinion of Aug.* 14, 1865, 11 Op. 318.

5. The direct-tax commissioners are not required to give the Freedmen's Bureau possession of any lands purchased for the United States at direct-tax sales which are subject to redemption under the law, and the Commissioner of the Bureau has no authority to set apart those lands, or any of them, for the uses mentioned in the statute of March 3, 1865, chap. 90. *Opinion of Sept.* 6, 1865, 11 Op. 341.

6. A certificate of sale issued to the United States upon a purchase by them of property under the direct-tax act of June 7, 1862, chap. 98, should be signed by the commissioners who constituted the board at the time of the issuing of the certificate. *Opinion of Sept.* 3, 1866, 12 Op. 30.

7. Such certificate should bear date as of the day it is actually signed. *Ibid.*

8. The patent authorized to be issued by the second section of the act of March 3, 1865, chap. 87, for lands sold for direct taxes, is to be issued by the General Land Office, and not by the Treasury Department. *Opinion of Sept.* 13, 1866, 12 Op. 45.

9. The Secretary of the Treasury has no power, on the application of the trustees of the Florida Railroad Company, to issue repayment drafts to the purchasers of lands of the company, sold for direct taxes, upon a claim that the lands have been duly redeemed. *Opinion of Oct.* 26, 1868, 12 Op. 517.

10. It is competent to the officer of internal revenue, designated by the Secretary of the Treasury under the third section of the joint resolution of March 26, 1867, to perform the duties of tax-commissioner in South Carolina, to enter upon and sell lands that may have been previously sold partly for cash and partly on credit by the tax-commissioners in that State pursuant to the provisions of section 11 of the act of June 7, 1862, chap. 98, in cases where default in the deferred payments has been made by the purchasers of such lands. *Opinion of Jan.* 5, 1872, 13 Op. 559.

11. That officer can receive, at any time before the entry and sale, the amount due on the deferred payments, including interest, and such payment will perfect the title of the purchaser so far as the Government is concerned. *Ibid.*

12. The assignee of a certificate of sale

issued by the tax-commissioners to a purchaser stands in the same situation as the latter, and upon payment by him of the amount in arrears, at any time prior to entry and sale by the aforesaid officer, becomes entitled to the property. *Ibid.*

13. The purchase of lands sold by the tax-commissioners for taxes, under the direct-tax law, is not within the prohibition of the eighth section of the act of September 2, 1789, chap. 12, which forbids the purchase by certain officers of "public lands or other public property." *Opinion of Dec.* 19, 1873, 14 Op. 352.

14. The *proviso* in section 6 of the act of March 3, 1865, chap. 87, requiring bills for expenses incident to proceedings of the direct-tax commissioners to be submitted to and approved by the Secretary of the Treasury before payment, does not withhold from the action of the Secretary cases in which his approval is asked after such bills have been paid by the commissioners. *Opinion of May* 27, 1876, 15 Op. 106.

15. The authority exercised by the Secretary under section 14 of the same act, in fixing the rates of compensation to be allowed the clerks, &c., there mentioned, is distinct from that exercisable under section 6, and does not amount to an *approval* of payments to such persons within the meaning of the latter section. *Ibid.*

DISBURSEMENT OF PUBLIC MONEYS.

See also CHECKS.

1. The superintendent for construction and repair of the Cumberland road may be allowed to disburse funds committed to his care by turning over the same to officers employed under him; yet he must be held personally accountable at the Treasury for the correct disbursement thereof. *Opinion of July* 15, 1836, 3 Op. 140.

2. Disbursing officers of the Government, in accepting their offices, assume the risk and trouble of exchanges and transportation of funds, and cannot charge for insurance, but only for the actual expenses of transportation. *Opinion of May* 23, 1849, 5 Op. 104.

3. If they insure the amount received upon a draft to cover their liability to the Government, it is for their own indemnity, for if it be lost by force, theft, hazard of the elements, or any other cause, they are responsible. The transportation is never at the will of the Government, but always at that of the officer. *Ibid.*

4. Antecedent authority to insure cannot charge the Department for a loss. *Ibid.*

5. Under section 3620 Rev. Stat., as amended by act of February 27, 1877, chap. 69, the Treasurers and Assistant Treasurers of the United States may be authorized to pay the checks of disbursing officers, where the same are drawn in favor of the persons to whom payment is made, but are payable to order or bearer. Whether such checks shall be made payable only to the persons entitled to payment, or to bearer, or to order, is a matter to be regulated entirely by the discretion of the Secretary of the Treasury. *Opinion of June* 4, 1877, 15 Op. 288.

6. It is competent to the Secretary of the Treasury, under section 3620 Rev. Stat., as amended by the act of February 27, 1877, chap. 69, to permit disbursing officers to draw, and the assistant treasurers and public depositaries to pay, checks made payable to themselves or bearer or order, for such sums as may be necessary to make payments of small amounts, to make payments at a distance from a depositary, or to make payments of fixed salaries due at a certain period (as authorized by Treasury regulations of August 24, 1876), provided such checks bear indorsed thereon the names of the persons to whom the sums are to be paid, or the claim upon which they are to be paid, or are accompanied by a list or schedule, made a part of the check, containing the same information. *Opinion of June* 8, 1877, 15 Op. 303.

7. Under section 5 of the act of June 20, 1874, chap. 328, it is the duty of disbursing officers, with whom funds have been placed for disbursement, when the time arrives at which unexpended balances of the appropriations from which such funds were drawn lapse, to repay the funds remaining in their hands, in order that they may be carried to the surplus fund and covered into the Treasury. *Opinion of Aug.* 10, 1877, 15 Op. 358.

8. Where previous to that time, these officers have issued certificates by which claims upon such appropriations have been definitely ascertained, and payment thereof has not actu-

ally been made before that time, such claims may thereafter be paid by them out of the proper funds remaining in their hands. *Ibid.*

9. For what period and to what amount such officers should be allowed to retain in their hands funds for that purpose, after the date when unexpended balances of the appropriation lapse, is a matter of administration, falling within the province of the Secretary of the Treasury to regulate. *Ibid.*

10. The provisions of section 3651 Rev. Stat. in effect prohibit the exchange of gold and silver coin for United States notes by the Treasurer, assistant treasurers, and other depositaries of public funds. *Opinion of Sept.* 19, 1879, 16 Op. 381.

DISCHARGE.

See ARMY, XXI.

DISMAL SWAMP CANAL.

The joint resolution of July 25, 1866, authorizing the sale of the stock of the Dismal Swamp Canal Company, owned by the United States, considered. *Opinion of Jan.* 25, 1868, 12 Op. 350.

DISMISSAL.

See ARMY, IX; MARINE CORPS, III; NAVY, VII.

DISPOSAL OF OLD MATERIAL.

1. Under the act of 3d March, 1825, chap. 93, the President, only, has power to cause ordnance, arms, ammunition, &c., unfit for public service, upon proper inspection and survey, to be sold; and to that end, a method of effecting the sale has been prescribed by the Secretary of War, by which the property must be offered first at public auction. *Opinion of Sept.* 11, 1833, 2 Op. 580.

2. Upon examination of section 3618 Rev. Stat., amended by act of February 27, 1877, chap. 69, and also of section 3672 Rev. Stat.: *Advised* that the Chief of the Bureau of Engraving and Printing cannot be authorized by the Secretary of the Treasury to exchange certain old presses for a new press with the manufacturers, so that but a small amount of money in addition will have to be paid to them therefor; yet that the Secretary may authorize a sale of the old presses to the manufacturers, the proceeds to be covered into the Treasury, and at the same time a purchase of the new press can be made from them, paying for the same out of the appropriation available for that purpose. *Opinion of June* 23, 1877, 15 Op. 322.

DISTRICT ATTORNEY.

See also COMPENSATION, II; FEES AND COSTS.

1. Where the decree of a judge raises a presumption against the jurisdiction of the United States courts, in cases of capture, the district attorney may cause the necessary depositions to be taken *de bene esse*, to be used by the Executive, in case the appellant does not prosecute his appeal, or the decree be affirmed. *Opinion of Feb.* 8, 1794, 1 Op. 39.

2. It is the duty of district attorneys to attend all the courts of their respective districts when required by the Government. *Opinion of Feb.* 18, 1830, 2 Op. 319.

3. Where a district attorney acted as counsel for a collector of customs in suits instituted against him to recover back duties paid under protest, and was adjudged by the circuit court to be entitled to receive his fees and disbursements for such service from the United States: *Held* that the same should not be included in his official return of fees under the act of 18th May, 1842, chap. 29, for the reason that the services were rendered as the private counsel of the collector, and not in his official capacity as district attorney. *Opinion of Feb.* 9, 1844, 4 Op. 308.

4. It is not the official duty of a district attorney of the United States to attend on the examination by a magistrate of a State of a complaint preferred by an officer of the Army against a citizen for violation of an act of Congress, or to leave the place of his residence to assist such officer of the Army in procuring evidence, or otherwise preparing the case. *Opinion of Nov.* 11, 1853, 6 Op. 218.

5. A district or territorial attorney of the

United States has no power to commence a suit in the name of the Government without instructions from the Solicitor of the Treasury, except in a case of manifest urgency, which it is his duty to communicate to the Solicitor immediately, in order that he may be instructed as to its further prosecution by the Solicitor. *Opinion of Jan.* 1, 1855, 8 Op. 454.

6. It is the official duty of district attorneys to appear in the Federal courts of their respective districts in all cases in which the United States shall be concerned, although the case may stand not in the name of the United States, but of some officer of the United States. *Opinion of Feb.* 20, 1857, 8 Op. 399.

7. The act of August 16, 1856, chap. 124, section 12, was intended to compel district attorneys to include in their emolument accounts the fees received from the Government for defending its officers, as well as other fees. *Opinion of May* 25, 1858, 9 Op. 146.

8. When the office of a district attorney is so overburdened with business the Departments may employ other counsel to aid him in defending suits against the public officers, or may allow him to employ a regular assistant at an agreed salary. *Ibid.*

9. It is in the discretion of the Secretary of the Treasury to decide whether an outgoing district attorney shall cease all connection with pending suits against collectors; but in some cases it would be wise to employ the late attorney as assistant counsel with the incumbent. *Ibid.*

10. The Secretary of the Treasury has no authority to appoint an assistant district attorney at a fixed salary payable out of the judiciary fund. *Opinion of June* 5, 1858, 9 Op. 164.

11. The heads of the several Departments may retain an assistant for a district attorney to aid in the defense of suits against the Federal officers. *Ibid.*

12. Such counsel should act under the direction of the district attorney, and his maximum compensation should be fixed when he is employed. *Ibid.*

13. A district attorney is entitled, under the act of February 26, 1853, chap. 80, to mileage only from the place of his permanent residence to the place where the court is held. *Opinion of Feb.* 11, 1860, 9 Op. 411.

14. He is entitled to mileage to and from court, as of right, in all cases of his lawful attendance on court at a distance from his place of abode. *Ibid.*

15. Travel is not a "service" within the meaning of the act of February 26, 1853, chap. 80. *Opinion of Feb.* 18, 1860, 9 Op. 417.

16. The necessary attendance of a district attorney before one court is a sufficient cause to render it impossible for him to attend another court held in a different place at the same time. This will justify the appointment of a substitute to attend such other court, if the public interest requires it. *Opinion of Dec.* 11, 1860, 9 Op. 526.

17. It is not a part of the official duties of a district attorney to resist applications for the discharge of enlisted minors, under writs of *habeas corpus* issued out of State courts, but the Secretary of War has power to employ the district attorney for that purpose if he shall deem it proper. *Opinion of Oct.* 16, 1861, 10 Op. 146.

18. The plain intent of section 14 of the act of August 16, 1856, chap. 124, was to guard against injury to the public service by the accidental and temporary inability of a district attorney to attend at court, and not to allow him to hold the title of his office while all its duties are performed by a deputy or substitute of his own appointment, and the officer himself volunteers to employ all his time in another vocation. *Opinion of Nov.* 2, 1861, 10 Op. 150.

19. While a district attorney who should accept a commission in the Army and neglect the duties of his civil office would be liable to be removed by the President, yet the acceptance of such a commission would not, *proprio vigore*, vacate the office of district attorney. *Ibid.*

20. The fees received by the district attorney for the southern district of New York for services in confiscation cases constitute a part of his official emoluments, and as such must be accounted for, pursuant to section 3 of the act of February 26, 1853, chap. 80. *Opinion of Sept.* 12, 1864, 11 Op. 79.

21. A district attorney is not required to return in his emolument accounts the compensation received for services rendered under section 12 of the act of March 3, 1863, chap. 76, in suits against collectors or other revenue officers. *Opinion of Sept.* 20, 1864, 11 Op. 88.

22. Section 15 of the act of June 22, 1874,

chap. 391, modifies section 838 Rev. Stat., in so far as to require the district attorney to commence proceedings in all cases covered by the latter section, excepting *only* where the case cannot in his judgment be "sustained." *Opinion of Nov.* 11, 1875, 15 Op. 523.

23. It is the duty of the district attorney, however, to report the facts to the Secretary of the Treasury in every case (as well where proceedings are instituted by him as where they are not), to the end that the Secretary may determine what "the ends of public justice require" in relation thereto. *Ibid.*

DISTRICT COURT OF THE UNITED STATES.

When there is a vacancy in the office of district judge the circuit judge cannot designate a district judge to hold court in that district, the act of Congress (of July 29, 1850, chap. 30) only authorizing such designation in cases of sickness or other disability. *Opinion of Jan.* 23, 1858, 9 Op. 131.

DISTRICT OF COLUMBIA.

See also WASHINGTON CITY.

I. *Generally.*
II. *Commissioners of.*
III. *Police Board.—Board of Health.*
IV. *Sinking fund.*
V. *Bonds and other Securities of.*

I. Generally.

1. The orphans' court of the county of Washington has power to grant letters of administration in respect to assets existing in the county, and payments made by the Treasury Department to an administrator thus appointed are regular; yet, in a case where the decedent resided in Baltimore, and left a will appointing an executor there, and letters granting administration *de bonis non* are afterwards granted in Maryland upon the same estate, the letters issued in Washington become subordinate to them. *Opinion of April* 18, 1836, 3 Op. 89.

2. The circuit court of the District of Columbia is not invested with authority to issue a mandamus against the Postmaster-General to compel him to execute an act of Congress in a particular way. *Opinion of May* 30, 1837, 3 Op. 236.

3. The inspectors of the penitentiary in the District of Columbia have, notwithstanding the authority conferred on the warden by the act of 25th February, 1831, chap. 31, the responsibility and duty of a general superintendence and management of the institution; and it belongs to them to limit the number of subordinate officers and servants, and to regulate their salaries. *Opinion of July* 6, 1849, 5 Op. 129.

4. In them, and not in the warden, is vested the authority to appoint the physician and chaplain, they not being "inferior officers" within the meaning of the law. *Ibid.*

5. The circuit and district courts of the District of Columbia are circuit and district courts of the United States within the meaning of paragraph No. 167 of act 18th May, 1842, chap. 29, and the clerk thereof is required to return a semi-annual account of his fees and emoluments; but said clerk, as *ex officio* clerk of the criminal court of said District, is not required to make such return for the criminal court. *Opinion of Feb.* 28, 1853, 5 Op. 678.

6. The fees of inquests *super visum corporis* in the county and city of Washington are to be paid out of the goods and chattels of the deceased. *Opinion of June* 19, 1854, 6 Op. 561.

7. In default of such goods said fees are a charge on the county, to be defrayed by the levy court, and are not lawfully payable by the United States. *Ibid.*

8. The question of the validity and of the formal parts and operation of a will made in the District of Columbia, as it now exists, mainly depends on the laws of the State of Maryland. *Opinion of Feb.* 5, 1855, 7 Op. 47.

9. In order that a devise of real estate shall be effective on lands situated in the District of Columbia, such devise must have been executed in conformity with the statutes of the State of Maryland. *Ibid.*

10. The distribution of the personal effects of a decedent situated in the District is governed by the *lex domicilii*, not the *lex loci rei sitæ*. *Ibid.*

11. No persons, not of the Army or Navy, are entitled to admission into the Government hospital as indigent insane, unless at the time

of becoming insane they are legal residents of the District. *Opinion of Aug.* 30, 1855, 7 Op. 450.

12. Responsibility of clerk of the courts of the United States in the District of Columbia for fees receivable by his office reaffirmed. *Opinion of Aug.* 12, 1856, 8 Op. 33.

13. Construction of the act of Congress of August 11, 1856, chap. 84, amending the charter of the city of Georgetown. *Opinion (unofficial) of Nov.* 28, 1856, 8 Op. 546.

14. The clerk of the circuit court of the District of Columbia is bound by law to account for the fees earned and received by him in the criminal court as well as in the circuit court. *Opinion of April* 8, 1858, 9 Op. 136.

15. The marshal of the District of Columbia is entitled, under the act of March 3, 1807, chap. 23, to a daily allowance of twenty-one cents and a slight fraction for keeping and subsisting prisoners confined in the jail of the District on criminal charges. *Opinion of March* 27, 1862, 10 Op. 210.

16. The fees of the marshal of the District of Columbia for services under the act of April 16, 1862, chap. 54, do not constitute a part of his regular emoluments, to be included in his semi-annual returns to the Interior Department, under the act of February 26, 1853, chap. 80, and are not subject to the limitation upon the amount of his compensation contained in that act. *Opinion of Feb.* 18, 1863, 10 Op. 458.

17. Under the order of the Secretary of the Interior requiring the marshal of the District of Columbia to state and settle his accounts for fees and expenses of courts, in accordance with the act of February 26, 1853, chap. 80, the marshal is entitled to receive for the maintenance of the prisoners confined in jail for criminal offenses such allowance as that act authorizes. *Opinion of Feb.* 28, 1863, 10 Op. 463.

18. The act of 1853 entitles the marshal to a reasonable allowance for such service, the amount of which is determinable by the proper accounting officers, under the direction of the Secretary of the Interior, according to a fair and just standard. *Ibid.*

19. The act of February 29, 1864, chap. 16, authorizing the appointment of a warden of the jail in the District of Columbia, deprives the marshal of the District of Columbia of the power of executing sentence of death upon any person imprisoned in the jail of that District under such sentence. *Opinion of March* 28, 1864, 11 Op. 34.

20. The appointment of the register of wills for the District of Columbia is with the President, by and with the advice and consent of the Senate, and the tenure of the office is at the pleasure of the President, subject to the modification prescribed by the tenure of office acts. *Opinion of April* 25, 1871, 13 Op. 409.

21. The act of February 21, 1871, chap. 62, providing a government for the District of Columbia, does not repeal or modify the act of March 3, 1803, chap. 20, providing for the organization of the militia of the District; nor does it confer upon the legislative assembly of the District power to repeal or modify the provisions of the latter act. *Opinion of Dec.* 25, 1871, 13 Op. 542.

22 Congress not having placed the Secretary of War under the direction of the said legislative assembly, it has exceeded its powers in enacting that "the officers of the District militia shall be commissioned by the Secretary of War." *Ibid.*

23. Under the act of February 21, 1871, it is the duty of the governor of the District to commission all officers created by the District legislative assembly. *Ibid.*

24. All sessions of the legislative assembly of the District of Columbia, called as well as regular, are by section 5 of the act of February 21, 1871, chap. 62, limited in duration to sixty days. *Opinion of Jan.* 15, 1872, 14 Op. 1.

25. The board of commissioners created by the act of June 1, 1872, chap. 260, to carry out the provisions of the act of July 25, 1866, chap. 236, and the acts amendatory thereof, authorizing the construction of a jail in and for the District of Columbia, have no power to purchase a site for the jail. *Opinion of July* 18, 1872, 14 Op. 60.

26. By the act of July 25, 1866, the selection of the site therefor was restricted to "a suitable place, on some of the public grounds belonging to the Government." Under that act a site was selected; but afterward, by joint resolution of March 2, 1867, Congress directed a new site to be selected, and this enactment left the restriction imposed by the act of 1866, as to the selection of the site, still in force. *Ibid.*

27. The act of June 1, 1872, contains nothing that enlarges the field of selection which existed previous thereto, or that renders the restriction mentioned inconsistent with its provisions; and though, under it, the board of commissioners may change the site, they cannot locate the same on any other ground than such as is already owned by the Government. *Ibid.*

28. The fifteenth section of the act of August 6, 1861, chap. 62, was entirely superseded by the act of February 21, 1871, chap. 62, and no longer imposes any duty or confers any authority in regard to providing accommodations for the police force of the District of Columbia, this subject clearly falling within the legislative power given by the latter statute to the legislative assembly of the District. *Opinion of Oct.* 11, 1872, 14 Op. 127.

29. *Semble* that under the sixth section of the act of March 3, 1797, chap. 20, a writ of execution upon a judgment obtained in favor of the United States, issued by a court of the United States in any State, "may run and be executed in" the District of Columbia. *Opinion of April* 8, 1874, 14 Op. 384.

30. Accordingly, where two such writs were directed to the marshal of said District from the United States circuit court for the western district of Tennessee: *Advised* that it was his duty to execute them. *Ibid.*

31. The First and Second Comptrollers of the Treasury, sitting as a board of audit under the act of June 20, 1874, chap. 337, are, by the provisions of that act, authorized to allow interest at the rate of 6 per cent. per annum upon that part of the indebtedness of the District of Columbia which purports "to be evidenced and ascertained by certificates of the auditor of the board of public works" of said District. *Opinion of Oct.* 17, 1874, 14 Op. 465.

II. Commissioners of.

32. The Commissioners of the District of Columbia have authority, under the act of June 20, 1874, chap. 337, to appoint notaries public in and for the District. *Opinion of July* 17, 1874, 14 Op. 419.

33. The Board of Commissioners of the District of Columbia, under its general executive and administrative authority over the affairs of the District, and its general supervision and direction over the Engineer officer detailed to perform certain duties relating to the "repair and improvement of all streets, avenues, alleys, sewers, roads, and bridges of the District," has power to direct the discharge of the two assistants whom that officer is authorized to appoint, whenever, in its judgment, circumstances make it expedient to determine their employment. The Engineer officer is not authorized to retain these assistants after the Board has directed their discharge. *Opinion of April* 6, 1877, 15 Op. 216.

34. The Commissioners of the District of Columbia have not power under the act of June 11, 1878, chap. 180, to abolish the office of the fire commissioner, whose appointment is vested in the Secretary of the Interior by the law creating the office (the act of the legislative assembly of the District of Columbia, passed August 21, 1871). *Opinion of Oct.* 17, 1878, 16 Op. 180.

III. Police Board.—Board of Health.

35. Under the authority of the act of August 6, 1861, chap. 62, the board of police of the District of Columbia may, at the expense of the United States, uniform the police, mount such a portion of them as may be necessary, and also employ a temporary drill-master for their instruction. But the board have no authority to appoint an assistant clerk and messenger. *Opinion of Sept.* 27, 1861, 10 Op. 131.

36. The *ex officio* members of the board are not entitled to the compensation of $5 per day allowed by the twenty-second section of that act. *Ibid.*

37. By section 22 of the act of August 6, 1861, chap. 62, the treasurer of the board of police is entitled to the per diem allowance of $5 as a commissioner, in addition to his official salary of $600 per annum. *Opinion of Nov.* 7, 1861, 10 Op. 156.

38. The board of police of the District of Columbia have no authority to employ, in the erection of buildings to be used as police headquarters, the funds saved from past appropriations made by Congress for the payment of salaries and other necessary expenses of the Metropolitan police for said District. *Opinion of June* 24, 1870, 13 Op. 264.

39. The board of health of the District of Columbia, in the absence of any statutory provision on the subject, has of necessity an in-

herent power to appoint officers necessary to its complete organization, such as a clerk or secretary. *Opinion of June* 8, 1871, 13 Op. 577.

40. The board may not only declare what shall be deemed nuisances, but provide by contract or otherwise for the removal of nuisances, if necessary, at the expense of the District. *Ibid.*

41. *Semble* that the power given to the board to make and enforce regulations is confined to preventing domestic animals running at large in the streets, and the sale of unwholesome food; but that this power includes the power to fix penalties for the violation of such regulations, at least in the absence of any legislation on the subject. The enforcement of such penalties, however, must be through the ordinary tribunals and magistracy of the District. *Ibid.*

42. By the 3d section of the act of July 23, 1866, chap. 215, which remains in full force, no valid license for the sale or disposal of intoxicating drinks within the District of Columbia can be issued without the approval of the Board of Metropolitan Police. *Opinion of Dec.* 10, 1873, 14 Op. 339.

43. The board is bound to act on all licenses duly presented for approval; but it is not required to *approve* every license so presented, though as regards such license a full compliance with the other provisions of the license laws is shown. *Ibid.*

44. The power conferred upon the board is wholly discretionary, and may be exercised by it as the circumstances of each case in its judgment seem to require. *Ibid.*

IV. Sinking Fund.

45. Upon consideration of the provisions of section 13 of the act of March 3, 1877, chap. 117, section 7 of the act of June 11, 1878, chap. 180, and section 3 of the act of March 3, 1879, chap. 182: *Held* that a previous requisition on the Secretary of the Treasury by the Commissioners of the District of Columbia is necessary to authorize a warrant for disbursing the sinking fund of the District by the Treasurer of the United States. *Opinion of Sept.* 29, 1879, 16 Op. 632.

V. Bonds and other Securities of.

46. The act of June 20, 1834, chap. 337, confers no power upon the sinking-fund commissioners of the District of Columbia, either directly or indirectly, to make the principal and interest of the 3.65 bonds, which they are hereby authorized to issue, payable in coin, by expressing on the face of the bonds that the principal and interest thereof will be paid in coin. *Opinion of Aug.* 11, 1874, 14 Op. 445.

47. Their duty as to the preparation of the bonds will be discharged in entire conformity with the requirements of the statute by making them payable in *dollars* simply, without introducing any qualification therein respecting the *kind of money* in which they are to be paid. *Ibid.*

48. The intention of the act, manifestly, is that the principal and interest of such bonds shall be paid in whatever may constitute, when the payment is to be made, *lawful money* of the United States. *Ibid.*

49. The amendment of the 7th section of the act of June 20, 1874, chap. 337, made by the act of February 20, 1875, chap. 94, supplies by legislative authority, in the particular clause to which it relates, nothing more than what was previously necessary to be supplied by construction, in order to give the clause any meaning or effect whatever, consistent with its obvious purpose. It does not really introduce any modification of the former law, but merely renders the meaning thereof more plain and explicit. Hence the pledge of the faith of the United States, with respect to the payment of the principal and interest of the District of Columbia 3.65 bonds, is not made any more complete thereby, but remains precisely as it was before. *Opinion of Mar.* 13, 1875, 14 Op. 545.

50. The word "guarantee" does not aptly describe the undertaking of the United States in relation to those bonds; though, *practically*, such undertaking, when regarded as a security, may be equivalent to an unqualified guarantee; inasmuch as the particular means and sources of revenue by and from which the United States promises to provide for the payment of said bonds, interest and principal, are unquestionably adequate to that end. *Ibid.*

51. The bonds of the District of Columbia, which the commissioners of the sinking fund of the District were authorized to issue by an act of the District legislative assembly, passed June 20, 1872, are not affected by the provisions of the 16th section of the act of March 3,

1875, chap. 162, requiring the destruction by burning of all bonds, sewer-certificates, and other obligations of the cities of Washington and Georgetown and of the District of Columbia, "paid or redeemed," &c., there not having been such a redemption of the first-mentioned bonds as to require them to be destroyed. *Opinion of Mar.* 29, 1875, 14 Op. 554.

52. Those bonds may be disposed of by the commissioners of the sinking fund agreeably to the provisions of the aforesaid act of the District legislative assembly, subject to the restriction respecting the sale thereof which is imposed by the 10th section of the act of June 20, 1874, chap. 337. *Ibid.*

53. The faith of the United States is, by section 7 of the act of June 20, 1874, chap. 337, and the amendatory act of February 20, 1875, chap. 94, pledged for the payment of the interest and principal of the bonds known as the 3.65 District of Columbia bonds. *Opinion of Oct.* 22, 1875, 15 Op. 56.

54. The holders of overdue coupons of the 8 per cent. certificates issued under the act of the legislative assembly of the District of Columbia, approved May 29, 1873, are entitled to interest thereon at the rate of 6 per cent. per annum; and such interest should be allowed by the Treasurer of the United States where such coupons are tendered in payment of taxes for special improvemements within the said District. *Opinion of June* 8, 1880, 16 Op. 515.

DOMESTIC VIOLENCE IN STATES.

1. Instruction as to alleged obstruction of legal process, indicating what acts are regarded as constituting an emergency to justify the intervention of the armed force of the United States. *Letter of Jan.* 20, 1854, *to United States marshal*, 8 Op. 445.

2. Consideration of the circumstances in which the President may employ the military and naval force of the Union to suppress insurrection in one of the States. *Opinion of July* 19, 1856, 8 Op. 8.

3. Where calls are made upon the President, under section 4, Article IV, of the Constitution, by two persons, each claiming to be governor of the same State, to protect the State against domestic violence, it of necessity devolves upon the President to determine, before giving the required aid, which of such persons is the lawful incumbent of the office. *Opinion of Ma* 15, 1874, 14 Op. 391.

4. Review of the respective claims of Elish. Baxter and Joseph Brooks—each of whom hav ing made application for Executive aid to sup press an insurrection in Arkansas—to be rec ognized by the President as governor of tha State. And upon consideration of the consti tution and laws of the State, the decisions o its highest judicial tribunal, and the actua determination of the controversy between thos parties by the general assembly of the State which, according to the rulings of the said tri bunal, had exclusive jurisdiction of the matte in controversy: *Advised* that Elisha Baxter b recognized by the President as the lawful gov ernor of the State. *Ibid.*

DOMICILE.

1. The question of the domicile, nationality or competent forum of a slave, depends on the of his master. *Opinion of June* 13, 1855, 7 Op 278.

2. Hence, if a crime be committed by a slav in the Indian country, and his master is a cit zen of the United States, he must be tried b the district court. *Ibid.*

3. But if the slave of a Cherokee commit crime against a Cherokee, and in the Cheroke Nation, he is triable by the Cherokees. *Ibic*

DOWER.

1. Marriage, seisin, and death of the husban are essential to the right of dower. Where th seisin is not sufficiently proved, dower cannc be allowed. *Opinion of Jan.* 29, 1827, 2 Op. 47

2. Where land has been mortgaged jointl. by husband and wife, the wife is dowable c the equity of redemption, after the death c her husband. *Opinion of July* 27, 1859, 9 Op 377.

DRAFTS OF FOREIGN GOVERNMENT.

The question whether the United States wil pay, according to their original tenor, draft drawn by the Mexican Government under the

lla convention, or suspend the payment at ubsequent request of said Government, is er of political not of legal determination. *ion of Nov.* 25, 1855, 7 Op. 599.

DRAWBACK.

See CUSTOMS LAWS, IX.

DUTIES.

COMMERCE AND NAVIGATION, III; CUSTOMS LAWS; INTERNAL REVENUE.

EASEMENT.

The Secretary of the Navy has no author- to grant to the city of Chelsea, Mass., a t to construct and maintain a sewer upon grounds of the United States naval hos- l at that place. To authorize the grant of right an act of Congress is necessary. *ion of Oct.* 1, 1878, 16 Op. 152.

A right to send rays from a light-house ss a private close, unobstructed by future tions thereon by the owner, is an easement ch must be gained by the United States in usual way, *i. e.*, by grant, express or im- l, from the owner of the close. In the nce of such a grant by the owner, his right uild upon the close remains intact; and, if s unwilling to make a grant, the United es are left to have recourse, under the law minent domain, to condemnation of the erty for the public purposes involved. *ion of Sept.* 29, 1879, 16 Op. 631.

EIGHT-HOUR LAW.

The act of June 25, 1868, chap. 72, con- ting eight hours a day's work for all Gov- nent laborers, does not absolutely require employés of the Government must receive igh wages for their eight hours' labor as lar industry in private employment re- s for a day's labor of ten or twelve hours; it simply requires that the same *worth* of r shall be compensated in the public em- ment at the same rate of wages that it re- ceives in private employment. *Opinion of Nov.* 25, 1868, 12 Op. 530.

2. The act of June 25, 1868, chap. 72, known as the eight-hour law, has nothing to do with the compensation to be paid to workmen in the navy-yards, that being still left to be determined under the provisions of the act of July 16, 1862, chap. 184, so as to conform, as nearly as is consistent with the public interest, with the rate of wages of private establishments in the immediate vicinity of the respective yards. *Opinion of April* 20, 1869, 13 Op. 29.

3. There is nothing in the latter statute requiring workmen in the navy-yards to be paid the same price for eight hours' labor which private establishments pay for ten or twelve, unless the amount of services rendered or the quality of work make the fewer hours in the navy-yards equivalent in value to the longer time hired in private establishments, or for some other reason make it consistent with the public interest. The conclusions of Attorney-General Evarts, in his opinion of November 25, 1868 (12 Op. 520), referred to and approved. *Ibid.*

4. The act of June 25, 1868, chap. 72, declaring that "eight hours shall constitute a day's work," left the subject of compensation to be regulated upon principles in force at the time of its passage. The President, by proclamation dated May 19, 1869, directed that thereafter no reduction should be made in the wages of Government employés on account of the reduction in the hours of labor: *Held* that persons serving the Government as laborers, workmen, and mechanics are not entitled to receive, for the period intervening between the date of the act and the date of the proclamation, the wages of a day of ten hours for working eight hours—the Government being under no obligation to pay more for the past because it has agreed to pay more for the future. *Opinion of May* 31, 1871, 13 Op. 424.

5. The provisions of the act of June 25, 1868, chap. 72, declaring that eight hours shall constitute a day's work for all laborers, workmen, and mechanics employed by or on behalf of the United States, are not applicable to mechanics, workmen, and laborers who are in the employment of a contractor with the United States. That act was not intended to extend to any others than the immediate employés of the Government. *Opinion of May* 2, 1872, 14 Op. 37.

6. The interpretation of the act of June 25, 1868, chap. 72, commonly called the eight-hour law, given in opinion of May 2, 1872, reaffirmed. *Opinion of May* 18, 1872, 14 Op. 45.

7. Section 2 of the act of May 18, 1872, chap. 172, relating to the settlement of accounts for the services of laborers, workmen, and mechanics employed by the Government between June 25, 1868, and May 19, 1869, was designed to have a broad and liberal construction; and, interpreted in this wise, its provisions may be taken to include all persons who were thus employed and paid by the day, although they may not come within the description of "laborers, workmen, and mechanics," regarding these words in their more strict signification. *Opinion of Oct.* 24, 1872, 14 Op. 128.

8. The circular of the Navy Department of March 21, 1878, announcing that "the Department will contract for the labor of mechanics, foremen, leading-men, and laborers on the basis of *eight* hours a day," but that all workmen "electing to labor ten hours a day will receive a proportionate increase of their wages," is in accordance with section 3738 Rev. Stat., embodying what is commonly known as the eight-hour law. *Opinion of July* 9, 1878, 16 Op. 58.

9. That section prescribes the length of time which shall amount to a day's work when no special agreement is made upon the subject. It does not forbid the making of contracts fixing a different length of time as the day's work. *Ibid.*

EMINENT DOMAIN.

1. The United States may lawfully make title to land in one of the States by expropriation as of the eminent domain of such State, and with assent thereof. *Opinion of April* 24, 1855, 7 Op. 114.

2. The act of the legislature of Maryland, empowering the United States to acquire land in said State for the use of the Washington aqueduct, is not in conflict with the Constitution either of that State or of the United States. *Ibid.*

3. The acquisition of land by the United States through the means of a statute process of expropriation is a "purchase," which, if done in strict accordance with the form of the statute, may be certified by the Attorney-General as vesting a valid title in the United States. *Ibid.*

4. The United States cannot take private land for the construction of a road in one of the Territories without some legal form of expropriation, either by act of Congress or of the Territory. *Opinion of July* 7, 1855, 7 Op. 3[illegible]

5. It is in the power of either of the States to take land of its citizens for public use by special act and without intervention of jury, but on payment of reasonable indemnity, ascertained by commissioners. *Opinion of Aug.* [illegible] 1856, 8 Op. 31.

6. A public use of the United States is a public use of each of the States of the Union. *Ibid.*

7. The eminent domain of the Mexican Republic in Texas passed to the new Republic or State, and never vested intermediately in the United States. *Opinion of Jan.* 26, 18[illegible] 8 Op. 333.

8. If, however, such eminent domain could have been held in suspense, it would have been vested in the State on its admission into the Union, in virtue of the inherent coequal right of the several States. *Ibid.*

9. All lands in America are held by title derived from the Government, and whether with or without express reservation, are held by the grantee and his assigns subject to the eminent domain of the Government. *Ibid.*

10. Constitutional provisions for security indemnity to private persons, for property taken for public uses, impliedly recognize the reserved right of the Government. *Ibid.*

11. On these points the law is substantially the same, both in Spanish and British America. *Ibid.*

12. The assessment made by the jury in the proceedings, under the statute of the State of California of February 14, 1859, for the condemnation of land for the erection of fortifications at Lime Point, California, will be accepted by the Government when the amount thereof is paid into the proper county treasury and a deed is demanded for the premises from the sheriff of the county. *Opinion of March* 20, 1861, 10 Op. 18.

13. The deed for land to which the United States may acquire title by condemnation under the said statute is not required to be approved by the Attorney-General under the joint resolution of September 11, 1841. *Ibid.*

14. The authorized agent of the United States will be protected, in the payment of the amount assessed by the jury as the value of the land, by taking the receipt of the county treasurer as his voucher for such disbursement. *Ibid.*

15. It seems that the United States may acquire private property for public use, in conformity with the laws of a State passed in the exercise of its own eminent domain. *Opinion of June* 26, 1867, 12 Op. 173.

16. Property owned by a State, and held for public uses, is not private property within the meaning of a law of the State providing for compensation to owners of private property appropriated to the use of corporations existing in the State, and such property is not subject to condemnation for the public use of the United States under that law. *Ibid.*

17. The mode of acquiring lands by the exercise of the right of eminent domain can be resorted to only in cases where provision is made therefor by statute. *Opinion of July* 30, 1870, 16 Op. 370.

ENLISTMENT.

See ARMY, XVI; NAVY, XII.

ENROLLMENT OF VESSELS.

See COMMERCE AND NAVIGATION, II.

EVIDENCE.

1. It is not the right of offenders on trial for violation of the laws of the United States to call upon the officers of the Government to exculpate themselves from charges that such officers had given their sanction to the offensive proceedings. *Opinion of March* 18, 1806, 5 Op. 695.

2. Where payment was to be made, under act of May 24, 1824, chap. 144, for the relief of certain assignees: *Held* that the notes of the assignor exhibited by the assignees were *prima facie* evidence of the debt, though the administrator might controvert it. *Opinion of Aug.* 13, 1824, 1 Op. 692.

3. The rule of law that no evidence shall be given against a prisoner except in his presence is a personal privilege, which he may waive. *Opinion of March* 15, 1825, 1 Op. 706.

4. If consent be given that depositions of witnesses abroad may be used on a trial, the point of time at which the consent shall be expressed will not affect the competency of the testimony. *Ibid.*

5. A receipt acknowledging that money had been received in part payment for a Virginia military land-warrant, but importing on its face that more was due, is not sufficient evidence of assignment; it is only evidence of an incomplete contract. *Opinion of Aug.* 31, 1827, 2 Op. 56.

6. Our courts hold that foreign laws are matters of fact, and should be proved like other facts. *Opinion of Oct.* 16, 1828, 2 Op. 168.

7. A receipt, dated 1785, acknowledging the receipt of money in part payment of a Virginia military warrant, is not *per se* an assignment, nor is it evidence of an assignment. *Opinion of Oct.* 13, 1829, 2 Op. 276.

8. There is no law which makes entries in the books of the paymaster of the Marine Corps, charging officers of that corps with sums of money, admissible as evidence in the settlement of their accounts. *Opinion of Feb.* 17, 1830, 2 Op. 319.

9. Depositions should not be admitted in courts-martial, except under certain restrictions, and in cases not capital. Such courts should adhere to rules of evidence established in courts of common law jurisdiction. *Opinion of June* 4, 1830, 2 Op. 344.

10. Legal evidence from competent sources (excluding the oaths of claimants and all interested parties) is what is intended by the word "proof" contained in the act of the 29th May, 1830, chap. 208. *Opinion of June* 21, 1836, 3 Op. 126.

11. The commissioner may prescribe the mode and kind of proof, how and by whom it should be taken, but cannot prescribe anything as proof which is not such in fact, nor any rule as to its weight and force. *Ibid.*

12. The Department of War may receive any credible evidence, written or oral, coming from any disinterested source, which may tend to establish the fact that Choctaw heads of families signified to the agent, within due time, their intention to remain and become citizens of the States. *Opinion of June* 27, 1836, 3 Op. 134.

13. The plats returned to the General Land Office by surveyors-general are evidence of the existence and general character of rivers, creeks, bays, &c., which the law requires to be marked upon them, and may be regarded as affording full proof for the purposes of settling pre-emptions and locations. *Opinion of March* 13, 1839, 3 Op. 420.

14. If satisfied of the correctness of the account furnished by the commissioners of the school fund in Ohio, the Secretary of the Treasury may allow the 3 per cent. to accrue to Ohio thereon, no further proof being required by the act of December 12, 1820, chap. 2. *Opinion of July* 15, 1840, 3 Op. 567.

15. There is no doubt of the competency of the evidence of the prosecutor before a court-martial; but how far his credibility may be affected by the relation in which he stands towards the accused is a question of discretion for the court itself. *Opinion of Nov.* 25, 1841, 3 Op. 714.

16. Where, in a contract for the removal of the Cherokee Indians, the number to be removed was left indefinite, making a case of latent ambiguity, parol evidence is admissible to show what the contract really was. *Opinion of Dec.* 8, 1841, 3 Op. 731.

17. Prior to the enactment of the act of March 2, 1855, chap. 140, no law of the United States existed for the execution of foreign rogatory commissions to take testimony in the United States. *Opinion of Feb.* 28, 1855, 7 Op. 56.

18. By the military as well as by the civil law, courts have authority to commission experts for the examination of all questions of mental or physical disability. *Opinion of Jan.* 31, 1857, 8 Op. 337.

19. The Secretary of the Interior is not concluded in his action as to the issue of certain land scrip by what purports to be an authenticated copy of an act of the State of Florida of the 19th of February, 1870, but may inquire whether or not such an act was passed by the legislature of the State and has become a law. *Opinion of April* 30, 1870, 13 Op. 224.

20. A paper purporting to be a duly authenticated copy, or an exemplification, of a statute of a State under the seal of the State is *prima facie* evidence of the existence of such statute; and, in the absence of anything to the contrary, would justify the Secretary in acting upon it. *Ibid.*

21. But when the evidence suggestions made that there is or that it was not passed accor of law, he has a right, and it is as he is called upon to act in existence or validity of such quire and determine what th respects are. *Ibid.*

EXCLUSIVE JURISI

See CESSION OF JURISDICTI QUIRED FOR PUBLIC USES OF LAND.

EXECUTION OF CAP TENCES.

1. In the early period of t there was irregularity in the p capital sentences under acts o is, upon the point whether th be executed on a warrant of th he was tried, or of the Presid *Oct.* 19, 1855, 7 Op. 561.

2. But in the administrati Jackson it was determined ar by circular from the office o General, in all cases to leave the sentence of the law to the court, in confidence that the c reasonable time for the interp tive clemency in cases where i terposed. *Ibid.*

EXECUTIVE DEPAR

See also DEPARTMENT OF JUS DEPARTMENT; NAVY POST-OFFICE DEPARTM PARTMENT; TREASURY WAR DEPARTMENT.

1. The executive officers a suits for acts in the regular d official duties. *Opinion of Ap* 759.

2. The decision of a head o directing payment of a par binding upon all the subord whom the same is to be aud *Opinion of April* 19, 1849, 5 O

3. This doctrine has been recognized from the organization of the Government, is necessary to its proper operations, and is warranted by law. *Ibid.*

4. The archives of any Department are not in the possession of the head of Department, chief of bureau, or clerk under either, for the time being, but in the possession of the United States. *Opinion of March* 25, 1853, 6 Op. 8.

5. Hence, a party cannot, by writ of replevin against such head of Department or other public officer, take papers from the public archives on the allegation of their being his private property. *Ibid.*

6. Any head of a Department may, in his discretion, employ special counsel in behalf of the Government. *Opinion of May* 11, 1855, 7 Op. 141.

7. The Auditor of the Treasury for the Post-Office Department has direct official relation to both the Treasury and Post-Office Departments. *Opinion of Aug.* 25, 1855, 7 Op. 439.

8. As a general rule the direction of the President is to be presumed in all instructions and orders issuing from the competent Department. *Opinion of Aug.* 31, 1855, 7 Op. 453.

9. Official instructions, issued by the heads of the several executive Departments, civil and military, within their respective jurisdictions, are valid and lawful, without containing express reference to the direction of the President. *Ibid.*

10. Heads of Departments or of Bureaus, and other certifying officers of the Government, cannot certify by delegation, unless when specially authorized so to do by act of Congress. *Opinion of Nov.* 9, 1855, 7 Op. 594.

11. When an officer of the United States entered into possession of property not in virtue of any public power delegated to him by the Government, or under any contract made with or for the Government, the Secretary of the Treasury has no power to protect him in the enjoyment of such rights as he may have under a private contract of his own. *Opinion of Feb.* 8, 1859, 9 Op. 280.

12. The heads of Departments have a rightful authority to direct allowances to be made, or to reject claims for allowances, in settling and adjusting accounts relating to the business of their respective Departments, and such directions ought to be conformed to by the accounting officers. *Opinion of Jan.* 13, 1863, 10 Op. 436.

13. It is the general theory of Departmental administration that the heads of the Executive Departments are the executors of the will of the President. *Opinion of Oct.* 9, 1863, 10 Op. 527.

14. The Secretary of War has authority to withhold his signature from a requisition for an amount which he believes to be not properly due, though certified to by the accounting officers of the Treasury Department. The opinion of Attorney-General Bates, of April 25, 1862 (10 Op. 231), upon this subject, approved. *Opinion of Sept.* 15, 1866, 12 Op. 43.

15. The Secretary of War cannot grant or convey any interest in land belonging to the United States, except in pursuance of an act of Congress expressly or impliedly authorizing him to do so. *Opinion of May* 13, 1869, 13 Op. 46.

16. The War Department has no authority to proceed with the erection of any other bridge than the one "recommended by the Chief of Ordnance," referred to in the act of March 2, 1867, chap. 170; nor has Congress authorized an expenditure for the bridge of more than one million of dollars, irrespective of the amount to be refunded by the railroad company. *Opinion of June* 9, 1869, 13 Op. 78.

17. When a right is created by law and a duty devolved upon an Executive Department under the same law, the enjoyment or enforcement of such right cannot be suspended at the request of a Congressional committee. *Opinion of June* 22, 1869, 13 Op. 113.

18. The New Idria Mining Company, if entitled to a patent under the law, and are prepared to furnish the proper proof of it, have a right to have the question of their claim to such patent passed upon by the Interior Department, notwithstanding the request from a committee of one of the Houses of Congress for suspension of action. *Ibid.*

19. An Executive Department has no right to omit or delay the discharge of the duties imposed upon it by law at the request of a committee of a House of Congress; it can only pay attention to such request when it affects a discretionary power. *Ibid.*

20. Under the provisions of the act of March 6, 1866, chap. 12, it is for the Secretary of the Treasury to determine whether a cattle dis-

ease prevailing in a foreign country is such that, if neat cattle or the hides of neat cattle are imported from thence into the United States, the importation will tend to the introduction or spread of contagious or infectious diseases among the cattle here. *Opinion of Oct.* 22, 1869, 13 Op. 158.

21. Should the Secretary determine that such importation will have that tendency, he can revoke, in whole or in part, the suspension of the said act heretofore made by him. *Ibid.*

22. The head of a Department should not dispose of public lands or issue the bonds of the Government in aid of any enterprise, however meritorious, without an unequivocal direction from Congress. *Opinion of June* 3, 1871, 13 Op. 430.

23. Under the proviso to section 11 of the act of February 24, 1855, chap. 122, the head of a Department is not at liberty to furnish to the Court of Claims, on a call from that court, information or papers, when to do so would, in his opinion, be injurious to the public interest. *Opinion of Nov.* 24, 1871, 13 Op. 539.

24. An application for copies of papers on file in a Department, to be used by the applicant in a suit promoted by him under section 3491 Rev. Stat., stands upon the same footing with a like application by a plaintiff in any other private suit. *Opinion of May* 13, 1876, 15 Op. 562.

25. Only those bureaus and offices can be deemed bureaus or offices in any of the Executive Departments which are constituted such by the law organizing the Department; the latter, with its bureaus or offices, being in contemplation of the law an establishment distinct from the branches of the public service and the officers thereof which are under its supervision. *Opinion of May* 16, 1877, 15 Op. 263.

26. Recommendations for office are not papers or documents which are required to be kept by the Departments in which they are deposited. They are placed on file therein for the convenience of applicants for office, who are allowed to withdraw them whenever they desire to do so. *Opinion of July* 28, 1877, 15 Op. 343.

27. Such applicants can properly be permitted to see objections that have been filed against themselves (subject to the limitation, however, that the permission should only be given where the communication is not in its nature privileged), in order that they may, if possible, answer or remove them. But the privilege should not be extended further, as all is done that justice requires when a party is permitted to see any objections filed against himself. *Ibid.*

28. Accordingly, where application was made to the President on behalf of a newspaper for permission to examine the files of the Executive Departments with a view to ascertain what persons have been recommended for office by a certain Senator and Representative in Congress (the purpose being to establish from such examination the fact that improper persons have been thus recommended by the Senator and Representative named): *Advised* that the Department files ought not to be submitted to a search of that character. *Ibid.*

29. Nor should copies of recommendations and papers of this nature be furnished in any case, unless the applicant appears himself to have been directly affected by the writing of which a copy is applied for. *Ibid.*

30. The provision in the sundry civil act of June 20, 1878, chap. 359, that "no books shall be printed and bound except when the same shall be ordered by Congress or are authorized by law," operates to prohibit the practice which theretofore existed (under *implied* authority of law) of printing and binding reports, &c., made in the course of Departmental business, and requires that thenceforth, for such printing and binding, there must be express statutory authorization. *Opinion of July* 2, 1878, 16 Op. 57.

31. The printing and binding, at the Government Printing Office, of the book called "The American Ephemeris and Nautical Almanac," for the Navy Department, are within the appropriation made by the act of June 20, 1878, chap. 359, for printing and binding for that Department, and accordingly are authorized by law. *Opinion of Sept.* 10, 1878, 16 Op. 127.

EXECUTORS AND ADMINISTRATORS.

1. Although it has been the custom of the Bank of the United States and the Treasury officers to respect powers of attorney derived from foreign executors, the Supreme Court has

decided (3 Cranch, 319) that suits cannot be maintained in the District of Columbia upon letters testamentary granted in a foreign country. *Opinion of Oct.* 16, 1828, 2 Op. 168.

2. Letters testamentary give to executors no authority to sue for the personal estate of the testator out of the jurisdiction of the power by which the letters were granted. *Held.*

3. A foreign administrator cannot maintain a suit on letters granted in a foreign country. Whatever may have been the practice of the Government concerning foreign letters, it is not safe to act upon a power of attorney to transfer any of the funded debt executed by a foreign administrator. *Opinion of Oct.* 16, 1828, 2 Op. 171.

4. Land script issued on the surrender of warrants should be issued to the heirs or assignees of the warrantee and not to executors nor administrators, for it is to be considered as belonging to the realty. *Opinion of Oct.* 1, 1830, 2 Op. 385.

5. Land warrants for bounty lands are real estate; and where parties first entitled have died, they must in general issue to heirs or devisees, not to administrators, nor to administrators with wills annexed. *Opinion of Mar.* 28, 1832, 2 Op. 506.

6. But in a case where there is a will and an administrator to execute it, and the issuing of the warrant to heirs will embarrass the administrator with the will annexed in carrying out the testator's intention; and where there are no conflicting interests to be affected by the form of the issue, it may issue to the administrator in trust for the purposes mentioned in the will. *Ibid.*

7. Where there is a conflict of claims between an executor and his assignees for an award of moneys by the Third Auditor to the decedent, the Treasury officers should pay the same to the executor, who is the legal representative. *Opinion of Dec.* 7, 1835, 3 Op. 29.

8. Executors and administrators are the "legal representatives," in contemplation of the act of July 5, 1832, chap. 173, to provide for liquidating and paying certain claims of the State of Virginia. *Opinion of March* 4, 1836, 3 Op. 43.

9. Where a medal was ordered to be struck and, before the resolution of Congress had been executed, the individual for whom it was intended died, it was deemed proper that it should be struck and delivered to the decedent's son and administrator. *Opinion of June* 22, 1841, 3 Op. 640.

10. An administrator has no right to demand land scrip under the act of May 30, 1830, chap. 215. *Opinion of May* 25, 1842, 4 Op. 37.

11. The administration law of Georgia has nothing to do with lands lying without the limits of the State which are governed by the *lex loci*. *Ibid.*

12. Congress was competent to pass, and did pass, an act (the act of March 3, 1837, chap. 41) conferring original authority upon administrators to make sale of Creek Indian reserves without reference to the law of Alabama. *Opinion of July* 28, 1842, 4 Op. 77.

13. Where a land warrant issued to the administrator *de bonis non* of a deceased colonel of the Virginia line, for services rendered by him in the Revolutionary war, and the said administrator proposed to surrender it and to receive scrip in lieu thereof for the benefit of the devisees named in the decedent's will, pursuant to the act of Congress for the relief of certain officers and soldiers of the Virginia line and navy and of the continental army: *Held*, that as the warrant issued to the administrator with the will annexed, for the benefit of the devisees, scrip in exchange may issue in the same manner and for the same purpose. *Opinion of March* 24, 1851, 5 Op. 308.

14. The Treasury of the United States has no locality, and credits upon it are not *bona notabilia* confined to the District of Columbia. *Opinion of June* 17, 1854, 6 Op. 557.

15. An unliquidated claim to bounty land scrip in Virginia passes by a clause of general residuary devise. *Opinion of Sept.* 13, 1854, 6 Op. 716.

16. An administrator of the estate with such will annexed, who, as such, received the bounty land warrant under the authorities of the State of Virginia, is entitled to receive the scrip in exchange from the United States. *Ibid.*

17. The words "legal representatives" in a statute generally intend executors and administrators, but may, according to the context and subject-matter, intend heirs at law. *Opinion of March* 9, 1855, 7 Op. 60.

18. During a professional visit of Madame Sontag Rossi to the United States, she invested the sum of twenty-five thousand dollars in stocks of the United States in her own per-

sonal name, and after her decease administration upon this property, as legal assests in the State of New York, was granted by the surrogate of the county of New York to "George Christ, of the city of New York, the attorney in fact of Charles Count Rossi, husband of Henrietta Rossi, deceased, late of Vienna, Austria;" the power of attorney referred to having been executed by Count Rossi after the death of Madame Sontag Rossi, and giving to Mr. Christ authority "to collect and receive any and all money due to me in any way, and to sell any stocks standing in my name on the books of any company in the United States, and the dividends on the same to receive:" *Held*, that this power of attorney does not, by the laws of the State of New York, apply to the stocks in question, which stocks having been invested in the name of his wife, and not having been reduced to possession by her husband during her lifetime, are not of necessity money or effects due or growing due to Count Rossi. *Opinion of March* 28, 1855, 7 Op. 68.

19. In general, by the statutes of New York, administration on the estate of the deceased wife is granted to the husband *jure mariti;* but that rule does not apply here, because the distribution of the effects of decedents is governed by the personal, not the local statute, and depends, in this case, on the *lex domicilii*, that is of Austria. *Ibid.*

20. In the present case, the rights of property appertaining to Count Rossi in the premises, if any, must be determined in Austria. *Ibid.*

21. Count Rossi, being a nonresident alien, is not, by the statutes of New York, entitled to administration there, and not being entitled himself, he cannot communicate any representative right of administration to Mr. Christ. *Ibid.*

22. It is doubtful whether the mere fact of a given dividend, on any stocks of the United States, being transmitted to the assistant treasurer of New York for payment, makes those stocks local assets in the State of New York. *Ibid.*

23. By the Treasury relegulations, transfer of public stocks held by foreign decedents may be made on satisfactory proof that the party claiming the right in such stocks is entitled as devisee, distributee, or otherwise according to law. *Opinion of May* 31, 1855, 7 Op. 240.

24. The rule for the distribution of the personal effects of any deceased citizen of the United States, either at home or abroad, is the law of the particular State of his domicile, and cannot be changed by act of Congress. *Opinion of June* 2, 1855, 7 Op. 242.

25. The face of a banker's circular letter of credit found in the possession of an American dying abroad is not assets to that amount to be administered by the consul. *Opinion of Oct.* 10, 1855, 7 Op. 542.

26. Unlocated land scrip of the State of Virginia belonging to the estate of the Baron Steuben, being personal estate, is subject to the testamentary provisions of Baron Steuben's will, proved in the State of New York, and therefore demandable, on the failure of testamentary trustees, by a trustee duly appointed by the courts of New York. *Opinion of May* 21, 1856, 7 Op. 688.

27. The estates of foreigners dying in the United States are settled by the local authorities. *Opinion of Sept.* 12, 1856, 8 Op. 98.

28. Administration may be granted to the next of kin if he reside in the State. *Ibid.*

29. A. B. died, leaving an executor, on whose death letters of administration on the estate of A. B. were taken out in the District of Columbia by C. D., a creditor, and afterwards letters were granted to E. F., in Kentucky, the place of decedent's domicile. Congress directed a sum of money to be paid to the legal representatives of A. B.: *Held*, that C. D. was entitled to receive the fund. *Opinion of Oct.* 15, 1859, 9 Op. 393.

EXPATRIATION.

1. Citizens of the United States possess the right of voluntary expatriation, subject to such limitations in the interest of the State as the law of nations or acts of Congress may impose. *Opinion of Oct.* 31, 1856, 8 Op. 139.

2. Any citizen of the United States, native or naturalized, may remove from the country and change his allegiance, provided this be done in time of peace, and for a purpose not directly injurious to the interests of this Government. *Opinion of Aug* 17, 1857, 9 Op. 63.

3. If he emigrates, carries his family and effects with him, manifests his intention not to

return, takes up his residence abroad, and assumes the obligation of a subject to a foreign Government, this implies a dissolution of his previous relations with the United States, and no other evidence of that fact is required by our law. *Ibid.*

4. A native of Bavaria naturalized in America may return to his native country and assume his political status as a subject of the King of Bavaria, if there be no law there to forbid it. *Ibid.*

5. The Bavarian Government may require him to abjure his allegiance to the United States in such form as they may choose to prescribe, since we on our part make our own regulations for the admission of Bavarian subjects as citizens of the United States. *Ibid.*

6. The natural right of every free person, who owes no debt and is not guilty of any crime, to leave the country, of his birth in good faith and for an honest purpose, the privilege of throwing off his natural allegiance and substituting another allegiance in its place, is incontestable. *Opinion of July* 4, 1859, 9 Op. 357.

7. We take our knowledge of international law not from the municipal code of England, but from natural reason and justice, from writers of known wisdom, and from the practice of civilized nations; and they are all opposed to the doctrine of perpetual allegiance. *Ibid.*

8. In the United States, ever since our independence, we have upheld and maintained the right of expatriation by every form of words and acts; and upon the faith of the pledge which we have given to it millions of persons have staked their most important interests. *Ibid.*

9. Expatriation includes not only emigration, but also naturalization. *Ibid.*

10. Naturalization signifies the act of adopting a foreigner and clothing him with all the privileges of a native citizen or subject. *Ibid.*

11. In regard to the protection of our citizens in their rights at home and abroad, we have in the United States no law which divides them into classes or makes any difference whatever between them. *Ibid.*

12. The theory that a naturalized citizen is liable to be divested of his acquired citizenship and allegiance if found within the power of his native sovereign, though he may claim the protection of his adopted country everywhere except in the country of his birth, is without any foundation, except the dogma which denies the right of expatriation without the consent of one's native country. *Ibid.*

13. A naturalized citizen who returns to his native country is liable, like any one else, to be arrested for a debt or a crime, but he cannot rightfully be punished for the nonperformance of a duty which is supposed to grow out of his abjured allegiance. *Ibid.*

14. A sovereign state who tramples upon the public law of the world cannot excuse herself by pointing to a provision in her own municipal code. *Ibid.*

15. A foreign Government cannot justify the arrest of a former subject who was naturalized in the United States by showing that he emigrated contrary to the laws of his native country. *Ibid.*

16. The declaration in the act of July 27, 1868, chap. 249, that the right of expatriation is "a natural and inherent right of all people," comprehends our own citizens as well as those of other countries; and where a citizen of the United States emigrates to a foreign country, and there, in the mode provided by its laws, formally renounces his American citizenship with a view to become a citizen or subject of such country, this should be regarded by our Government as an act of expatriation. *Opinion of Aug.* 20, 1873, 14 Op. 296.

17. The selection and actual enjoyment of a foreign domicile, with an intent not to return, would not alone constitute expatriation; but where, in addition thereto, there are other acts done by him which import a renunciation of his former citizenship, and a voluntary assumption of the duties of a citizen of the country of his domicile, these together with the former might be treated as *presumptively* amounting to expatriation, even without proof of naturalization abroad; though the latter is undoubtedly the highest evidence of expatriation. *Ibid.*

18. Obligations of the Government toward its citizens domiciled in foreign countries, who apparently have no intent to return, and who do not contribute to its support, considered; and likewise what should be regarded as evidence of the absence of an intent to return in such cases. *Ibid.*

EXPORTATION OF ARMS AND MUNITIONS OF WAR.

1. The commander of the Military Department of California has no authority to prohibit our own citizens from exporting munitions of war as merchandise to the belligerents in Mexico *Opinion of Dec.* 23, 1865, 11 Op. 408.

2. The steamer "Pocahontas" is entitled to clear with munitions of war for Honolulu. *Opinion of June* 8, 1866, 11 Op. 501.

EXTERRITORIALITY.

See also DIPLOMATIC AND CONSULAR OFFICERS, I; INTERNATIONAL LAW, III.

1. Citizens of the United States, in common with all other foreign Christians, enjoy the privilege of exterritoriality in Turkey, including Egypt; the same in the Turkish regencies of Tripoli and Tunis; and also in the independent Arabic states of Morocco and Muscat. *Opinion of Oct.* 23, 1855, 7 Op. 565.

2. A merchant vessel, except under some treaty stipulation otherwise providing, has no exemption from the territorial jurisdiction of the harbor in which the same is lying. *Opinion of Dec.* 14, 1876, 15 Op. 178.

EXTRADITION.

1. If a Spanish subject who has violated the territorial law of Florida shall be within the United States at the time of demand for him as a subject and fugitive from justice, he ought to be given up for trial and punishment; yet there is no law directing the mode of proceeding. *Opinion of Jan.* 26, 1797, 1 Op. 68.

2. The extradition of persons under the twenty-seventh article of the British treaty of 1794 is not authorized, unless the crime they are accused of was committed within the jurisdiction of Great Britain. *Opinion of March* 14, 1798, 1 Op. 83.

3. Whether a British subject who has run away with a British vessel, and entered one of our ports in violation of our revenue laws, should be delivered to the officers of his Government for trial, is doubtful as a question of international law, such a case not having been provided for by any statute or existing treaty. *Opinion of Nov.* 20, 1821, 1 Op. 510.

4. The Executive is not authorized to deliver up to the King of Portugal the seamen confined in Boston, who are charged by the chargé d'affaires of His Majesty with piracy committed on the brig Triumph. *Opinion of April* 16, 1833, 2 Op. 559.

5. There is no law of Congress which authorizes the President to deliver up any one found in the United States who is charged with having committed a crime against a foreign nation; and we have no treaty stipulations with Portugal for the delivery of offenders. *Ibid.*

6. No State can, without the consent of Congress, enter into any agreement or compact, express or implied, to deliver up fugitives from justice from a foreign state who may be found within its limits. *Opinion of Oct.* 11, 1841, 3 Op. 661.

7. According to the practice of the Executive Department, the President is not considered as authorized, in the absence of any express provision by treaty, to order the delivering up of fugitives from justice. *Ibid.*

8. Where a person is charged with the commission of the crime of murder in Scotland, and apprehended in the United States, and examined before a commissioner, and by him certified to be probably guilty on the evidence adduced: *Held* that he should be delivered up to justice if the evidence upon which the application is founded be such as, according to the laws of the place where the fugitive shall be found, would justify his or her apprehension and commitment for trial if the crime had there been committed. *Opinion of Aug.* 7, 1843, 4 Op. 201.

9. In such cases the mode of procedure is to prefer a complaint to a judge or magistrate, setting out the offense charged on oath; whereupon the judge or magistrate may issue a warrant for the apprehension of the person accused, and if, on the hearing, the evidence be deemed sufficient to sustain the charge, the same should be certified to the executive authority, that a warrant may issue for the surrender. *Ibid.*

10. A commissioner for the United States, appointed by the circuit court, is a magistrate within the meaning of the law and the treaty of Washington, and as such has power to apprehend, examine, and certify as to fugitives from justice. *Ibid.*

11. A requisition for a fugitive is not neces-

sary to a preliminary examination upon which the evidence of criminality is to be heard and considered, but with a view only to the surrender, after the ascertainment of the facts showing the party charged to be in a condition which justifies the apprehension and commitment for trial, according to the laws of the place where he or she shall be found. *Ibid.*

12. The Executive will not issue his warrant for the surrender of fugitives under the tenth article of the treaty of Washington, except in cases where the preliminary proceedings have been had and properly certified to him. *Opinion of Aug.* 29, 1843, 4 Op. 240.

13. The mode provided for the surrender of persons accused of the crimes mentioned in the treaty with France is by requisitions made in the name of the respective parties, through the medium of their respective diplomatic agents. *Opinion of July* 8, 1844, 4 Op. 330.

14. The surrender will be made only when the fact of the commission of the crime shall be so established that, according to the laws of the country in which the fugitive, or the person so accused, shall be found, his or her apprehension and commitment for trial would be justified, if the crime had been there committed. *Ibid.*

15. The international extradition of fugitives from justice is a duty of comity, not of strict right. *Opinion of Aug.* 19, 1853, 6 Op. 85.

16. It is the settled policy of the United States not to make such extradition except in virtue of expressed stipulations to that effect. *Ibid.*

17. Hence the United States ought not to ask for extradition in any case as an act of mere comity. *Ibid.*

18. Larceny is not included in the causes of extradition stipulated as between Great Britain and the United States. *Ibid.*

19. Any foreign Government entitled by treaty to the extradition of a fugitive from justice may apply to the courts, in the first instance; but, if requested, the President will issue the previous authorization held to be necessary by a portion of the court in Kaine's case. *Opinion of Aug.* 31, 1853, 6 Op. 91.

20. On a party being arrested for extradition and brought before a magistrate, that magistrate examines the case judicially; and his decision is not subject to any direction on the part of the President. Hence the question of remanding the prisoner for further examination, and the time of remanding, are questions for the magistrate to determine. *Ibid.*

21. The alleged fugitive may be arrested a second time on a new complaint, either with or without a new warrant of the President. *Ibid.*

22. Engagements of extradition, whether of fugitives from justice or from service, stand in each case on particular stipulations of treaty, and are not to be inferred from the "favored-nation" clause in treaties. *Opinion of Oct.* 14, 1853, 6 Op. 148.

23. In granting his mandate, at the request of a foreign Government, for the purpose of commencing proceedings in extradition, the President does not need such evidence of the criminality of the party accused as would justify an order of extradition, but only *prima facie* evidence. *Opinion of Nov.* 9, 1853, 6 Op. 217.

24. Where a court of one of the States assumes to take, by *habeas corpus*, out of the hands of a marshal of the United States, a person held by him as a fugitive from crime, committed in a foreign country, and under reclamation by treaty, the United States may well, by counsel and direction, protect their marshal in the maintenance of the laws, and in discharge of public faith toward the reclaiming foreign Government. *Opinion of Dec.* 13, 1853, 6 Op. 227.

25. When a commissioner of the United States has made return according to law, as to an alleged fugitive from justice, that he is lawfully subject to extradition, it is the duty of the Secretary of State to order the final writ of extradition, notwithstanding any contradictory proceedings of the courts of a State. *Opinion of Jan.* 30, 1854, 6 Op. 270.

26. Where a marshal of the United States has in custody a fugitive from foreign justice, under warrant of extradition from the proper authorities of the United States, and a State court undertakes to usurp jurisdiction of the case, it is the duty of the marshal, disregarding any process of the State court, to take the party to the exterior line of such State, and there deliver him to the agent of the foreign Government. *Opinion of Feb.* 13, 1854, 6 Op. 290.

27. Constructive larceny, consisting of em-

bezzlement of the money of a bank by one of its officers, is not among the causes of extradition provided for by treaty between Great Britain and the United States. *Opinion of April* 21, 1854, 6 Op. 431.

28. The United States will not make demand for extradition of a person alleged to be a fugitive from the justice of one of the United States, and to have taken refuge in Great Britain, except on the exhibition of a judicial "warrant" duly issued, on sufficient proofs, by the local authority of the State in which the crime is alleged. *Opinion of May* 31, 1854, 6 Op. 485.

29. Evidence of the forging of checks on the communal chest of Breslau, in Prussia, is sufficient cause for the issue of a warrant for judicial inquiry with a view to the extradition of the party, under the treaty between the United States and Prussia. *Opinion of Oct.* 7, 1854, 6 Op. 761.

30. A mere notification by the local officer of a foreign Government of the escape of an alleged criminal is not sufficient *prima facie* evidence of a case to justify the preliminary action of the President. *Opinion of Nov.* 2, 1854, 7 Op. 6.

31. All demands of international extradition must emanate from the supreme political authority of the demanding state. *Ibid.*

32. A foreign *mandat d'arrêt*, setting forth the offense of a fugitive from the justice of a foreign country within the terms of any treaty of extradition, such *mandat* coming through the proper political channel, is sufficient foundation for the issue of the President's warrant authorizing the institution of proceedings before the judicial authorities of the United States. *Opinion of June* 18, 1855, 7 Op. 285.

33. Statement of the subsisting treaties between the United States and foreign Governments for the extradition of fugitives from justice. *Opinion (unofficial) of July* 26, 1855, 8 Op. 519.

34. By treaty between the United States and Great Britain, the expense attending the proceedings in extradition is to be borne by the Government making the reclamation. *Opinion of Aug.* 23, 1855, 7 Op. 396.

35. But where, in consequence of conflict between the judicial authorities of the United States and those of a State, the latter aiming to prevent the extradition, the United States intervenes to maintain its own dignity in the premises, the special expenses of such intervention should be defrayed by the United States. *Ibid.*

36. The mutual extradition of fugitives from justice is an object alike interesting to all governments. *Opinion of Oct.* 4, 1855, 7 Op. 537.

37. Emigrants and exiles for cause of political difference at home are entitled to asylum in this country; but not malefactors; on the contrary, the foreign Government which reclaims its fugitive malefactors is serviceable to us by ridding us of the intrusive presence of crime. *Ibid.*

38. Hence, when reclamation of a fugitive from justice is made under treaty stipulation by any foreign Government, it is the duty of the United States to aid in relieving the case of any technical difficulties which may be interposed to defeat the ends of public justice the object to be accomplished being alike interesting to both Governments, namely, the punishment of malefactors, who are the common enemies to all society. *Ibid.*

39. The ordinary expenses, including fees of counsel, attending the process of international extradition, are to be defrayed by the demanding Government. *Opinion of Dec.* 20, 1855, 7 Op. 612.

40. Extradition cannot be demanded of France by the United States in the case of a breach of trust in the State of California, made grand larceny by the laws of that State. *Opinion of Feb.* 28, 1856, 7 Op. 643.

41. The term "public officers" or that of "public depositaries" in a treaty signifies officers or depositaries of the Government only in some of its branches or degrees, and does not comprehend officers of a railroad company. *Opinion of Sept.* 30, 1856, 8 Op. 106.

42. To justify the commencement of process in extradition, it must appear that the criminal acts charged, as complicity with robbery, were committed within the territorial jurisdiction of the demanding Government. *Opinion of Nov.* 29, 1856, 8 Op. 215.

43. Any competent magistrate may take jurisdiction of a question of international extradition voluntarily, that is without the previous application of the foreign Government, or issue of the preparatory letters permissive of the President. *Opinion of Dec.* 18, 1856, 8 Op. 240.

44. There can be no actual extradition without proper requisition to that effect, addressed by the foreign Government to the Secretary of State. *Ibid.*

45. Although extradition cannot be ordered by the President on mere judicial documents, but requires Executive requsition, still, it may be effected in the absence of any diplomatic minister of the demanding Government, through other intermediate agencies, recognized by the law of nations. *Ibid.*

46. An alleged criminal is subject to extradition, notwithstanding that he may have come to this country otherwise than as an apparent fugitive on account of the particular crime; for the treaties apply not only to persons seeking an asylum here professedly, but to such as may be found in the country. *Opinion of Jan.* 10, 1857, 8 Op. 306.

47. Recommendation that authority be given to France to institute process of extradition for the crime of forgery, as against persons accused of defrauding the Northern Railroad Company. *Opinion of Jan.* 10, 1857, 8 Op. 307.

48. It is the duty of the United States to provide a place of imprisonment for persons detained for extradition at the instance of a foreign Government. *Opinion of Feb.* 18, 1857, 8 Op. 396.

49. A clerical error in letters missive, authorizing a foreign Government to institute proceedings of extradition in the United States, is of no account, such a document not being a judicial paper in any sense, but only a political commission or license. *Opinion of Feb.* 27, 1857, 8 Op. 420.

50. The extradition laws do not require the proceedings against a foreign criminal or a deserting seaman to be either carried on or approved by the attorney of the United States for the proper district. *Opinion of Oct.* 29, 1858, 9 Op. 246.

51. In a case of the extradition of a fugitive from justice, the act of Congress does not require or authorize the issuing of any warrant by the State Department until the facts of the case are judicially ascertained and certified. *Opinion of July* 28, 1859, 9 Op. 379.

52. Attorneys of the United States in the several districts are not obliged by any act of Congress to appear on the part of foreign governments claiming the extradition of fugitives, and if the minister or agent of an accusing foreign Government needs legal advice, or desires to have a case presented to the judicial authorities through the medium of a professional lawyer, he may select whom he pleases for that purpose. *Opinion of Nov.* 15, 1860, 9 Op. 497.

53. By the extradition treaty between the United States and Prussia, the expenses of the apprehension and delivery of a fugitive must be defrayed by the party who makes the requisition and receives the fugitive. *Ibid.*

54. Under that treaty, a commissioner or marshal may lawfully demand such fees as are usual for analogus services rendered to the United States. *Ibid.*

55. The second section of the act of August 12, 1848, chap. 167, for giving effect to treaty stipulations with foreign Governments for the extradition of offenders, is repealed by the act of June 22, 1860, chap. 184. *Opinion of July* 6, 1863, 10 Op. 501.

56. In a case of extradition of a fugitive from justice of a foreign country, the judge or magistrate acts under special authority conferred by treaties and acts of Congress, and as no appeal from his decision is given by the law under which he acts, no right of appeal, by either party, exists. *Ibid.*

57. A discharge by a district judge of a person apprehended as a fugitive from justice does not preclude, in a proper case, his rearrest under the warrant of another judge, with a view to a re-examination of the case. *Ibid.*

58. A certificate, under the act of June 22, 1860, should show upon its face that the officer who made it is the principal diplomatic or consular officer of the United States, resident in the country making the demand of extradition, and should declare that the documents to which it is attached are legally authenticated, according to the laws of the country from which the fugitive escaped, so as to entitle them to be received as evidence for similar purposes by the tribunals of that country. *Ibid.*

59. Robbery on the lakes is piracy within the meaning of our extradition treaty with Great Britain; but inasmuch as the parties engaged in the outrages on Lake Erie were guilty of robbery and assault with intent to commit murder, the Secretary of State was advised, in view of the disputed question of piracy on the lakes, that their extradition should be demanded at the hands of the Cana-

dian authorities for those offenses. *Opinion of Oct.* 10, 1864, 11 Op. 114.

60. A warrant of extradition, issued under the third section of the act of August 12, 1848, chap. 167, is not a warrant of arrest. *Opinion of Oct.* 16, 1866, 12 Op. 75.

61. Under the extradition treaty with France, a public officer of the United States who embezzles moneys of the United States intrusted to his care, and flies from justice to the territory of France, is liable to be removed to this country for trial; such crime being here punishable with infamous punishment. *Opinion of Nov.* 29, 1867, 12 Op. 326.

62. The additional article proposed to the extradition treaty between the United States and France will be effectual for the mutual surrender of fraudulent bankrupts. *Opinion of July* 18, 1868, 12 Op. 434.

63. Where a citizen of Prussia, charged with the commission of a crime in Belgium, and with having thence afterward fled to the United States, was demanded by the German Government for the purpose of trial and punishment, under the extradition treaty between the United States and Prussia of June 16, 1852, which provides for the delivery up of persons who, being charged with certain crimes "committed within the jurisdiction of either party," shall be found within the territories of the other: *Held* that although by the law of Prussia the accused might be justiciable in that country for the alleged offense irrespective of the locality of its commission, yet that under said treaty the *locus delicti* is material, and unless it be within the jurisdiction of the demanding party the provisions of the treaty do not apply; and that, accordingly, in the present case, as the place where the alleged crime was committed is manifestly not within the jurisdiction of Germany, the accused was not demandable under the treaty. *Opinion of July* 21, 1873, 14 Op. 281.

64. L., a naturalized citizen, having fled the United States, was arrested in Ireland at the instance of this Government and extradited, under the treaty of 1842 with Great Britain, upon the charge of forgery. The extradition proceedings occurred in the spring of 1875, under the British act of 1870. Upon being brought back to this country he was arrested upon bench warrants issued by a United States circuit court, based on charges of other committed before his surrender, and since also been served with a *capias* is the same court in a civil suit brough United States to recover a debt due his surrender. Immunity from prose any civil action, or for any offense ot that for which he was extradited, being by him—upon the following grounds (1) that such immunity is provided fo British act of 1870, under which the tion proceedings took place; (2) that munity arises by implication out of t of 1842 alone; (3) that it is conceded tion 5275 Revised Statutes—he petit Executive to instruct the proper office prosecute further the civil suit agai nor any criminal proceeding against an offense other than that for whic extradited, and that he be discharg arrest under the said bench warrants: that section 5275 Rev. Stat. has no tion to the present case; that, by forc tion 27 of the British act of 1870, in of difference between that act and th of 1842 the treaty controls, and hence munity claimed here must be referre treaty considered alone; that this c immunity is not warranted by the sai and that no ground has been laid by tioner entitling him to the instructio for. *Opinion of July* 16, 1875, 15 Op.

65. Evidence of insanity is admis proceedings before a United States sioner for the extradition of one who is with an extraditable offense under th of 1842 with Great Britain and sect Rev. Stat., to explain what has been p support of the charge. *Opinion of* 1879, 16 Op. 642.

EXTRA PAY.

See COMPENSATION, VIII.

FEES AND COSTS.

See also COMMERCE AND NAVIGAT COMPENSATION.

1. The Secretary of the Treasury is ized to accept the payment of costs

tunc in order to discharge the obligations of certain sureties. *Opinion of Jan.* 9, 1822, 5 Op. 744.

2. The costs denounced against defendants by the concluding sentence of the first section of the act of March 3, 1795, chap. 48, were designed as a punishment for the failure of such defendants to comply with the requisition accompanying the notification of the Comptroller. Defendants who have the ultimate decision of the court in their favor are not liable to costs by force of the said act, unless in suits which have been commenced against them in conformity with the provisions thereof. *Opinion of Dec.* 4, 1829, 2 Op. 301.

3. In the matter of general and established practice, the regular taxation of the costs, and their allowance in due form by district judges, are binding and conclusive upon the accounting officers. *Opinion of Feb.* 14, 1840, 3 Op. 497.

4. The United States are liable to clerks of circuit courts for their fees, properly chargeable to plaintiffs, in suits in which the United States are plaintiffs, and the accounting officers may allow them, even though marshals may have collected them of defendants and have not paid them over. *Opinion of July* 20, 1840, 3 Op. 575.

5. In such cases the United States have recourse against marshals on their official bonds. *Ibid.*

6. Clerks of courts are not responsible to the Treasury for fees, which, after using due diligence, they have failed to collect. *Opinion of April* 13, 1841, 3 Op. 627.

7. The Government is liable for the costs made in a suit upon a draft drawn upon a banker abroad, by direction of the Government, by a chargé d'affaires for his salary, and which was protested for non-payment. The Government having devised that method of making salaries available to ministers and agents abroad, and having instructed them to draw upon a given banking-house, is bound to make reparation for any damages sustained in the way of costs occasioned by the non-acceptance or non-payment of the drafts. *Opinion of Dec.* 28, 1843, 4 Op. 295.

8. Costs of suit for the recovery of debts and penalties due the Post-Office Department, and arising under the laws for its government, are payable out of the funds of the Department, and not out of the judiciary funds. Therefore, such accounts should be settled by the Auditor of the Treasury for the Post-Office Department. *Opinion of Jan.* 22, 1844, 4 Op. 301.

9. The costs of suits instituted against postmasters and their bail, for debts and penalties, are payable out of the post-office funds, and not out of the judiciary fund. It is different, however, with costs incurred in criminal prosecutions. *Opinion of June* 6, 1844, 4 Op. 328.

10. The costs incurred in libelling, in the district court of Massachusetts, the brig Malaga, sent in as a prize on a charge of participating in the slave trade, are properly chargeable to the appropriation for defraying the expenses of the courts of the United States, and likewise for defraying the expenses of suits in which the United States are concerned, and for prosecution for offenses committed against the United States. *Opinion of May* 11, 1847, 4 Op. 565.

11. The allowance of the costs of prosecution, where the United States are concerned, does not depend upon the result of the proceedings. *Ibid.*

12. In suits against officers of the Navy for personal injuries inflicted by them under color of office, in which the Government of the United States has no pecuniary interest, the officers should be left to their defense, and to bear the costs, each, of their own defense, without any contribution whatever from the Department. *Opinion of July* 3, 1851, 5 Op. 397.

13. Where the suit is against the officer as a nominal party, the Government being substantially interested and bound ultimately to indemnify the officer in case of recovery against him, the proper course would be for the district attorney to cause the suit, if commenced in a State court, to be removed into the proper court of the United States, there to be defended by him. *Ibid.*

14. The fees of inquests *super visum corporis* in the county and city of Washington are to be paid out of the goods and chattels of the deceased. *Opinion of June* 19, 1854, 6 Op. 561.

15. In default of such goods said fees are a charge on the county, to be defrayed by the

levy court, and are not lawfully payable by the United States. *Ibid.*

16. *Semble* that by the laws of Texas the defendant in a civil action, which has resulted in his favor, is liable to the officers of the court for so much of the costs of the suit as was incurred in his behalf, but no more. *Opinion of April* 22, 1872, 14 Op. 35.

17. Where, however, the taxation of costs is erroneous or improper, the remedy of the party aggrieved is by motion to the court to retax. *Ibid.*

18. The fees and costs allowable in prosecutions against seamen, charged with any of the offenses enumerated in the act of June 7, 1872, chap. 322, are regulated by the act of February 26, 1853, chap. 80. *Opinion of Nov.* 5, 1873, 14 Op. 325.

19. Whether the provisions of the act of 1872, respecting the punishment of the offenses referred to, apply to seamen engaged for service on foreign vessels as well as to those engaged for service on American vessels, is a question that appropriately belongs to the courts having cognizance of such offenses to determine, and their determination should govern the action of the executive department of the Government in regard to the allowance of fees and costs, so far as such action depends on the answer to that question. *Ibid.*

20. The fees of marshals, district attorneys, and clerks of United States courts in Government suits, taxed and recovered as costs from the defendants therein, should be turned into the Treasury, and not paid over to the officers; they being entitled to payment (by force of section 856 Rev. Stat.) only on settling their accounts at the Treasury, and from the proper appropriation. *Opinion of Nov.* 9, 1877, 15 Op. 387.

21. So the fees of these officers, in cases of seizure, are not payable out of the proceeds of the property seized, except where the statute has so specially provided, but are payable only on settlement of their accounts at the Treasury, as in other cases. The exceptions to this rule are in cases of prize seizures (section 4639 Rev. Stat.) and seizures for forfeitures under the customs laws (section 3090 Rev. Stat.); also, the per centum allowed to district attorneys in lieu of all costs and fees under section 825 Rev. Stat. *Ibid.*

FINES, PENALTIES, AND FORFEITURES.

See also CUSTOMS LAWS, X, XI; FORFEITURE; INTERNAL REVENUE, X, XI; POSTAL SERVICE, V.

1. The power of an executive department to impose fines and forfeitures upon their contractors is derived solely from the agreement to that effect in the contracts. *Opinion of June* 4, 1857, 9 Op. 33.

2. Where a fine was imposed on a person by judicial sentence on conviction for crime against the United States, but the sentence was not enforced during the lifetime of the party, the President has power to remit the fine after his death. *Opinion of April* 15, 1864, 11 Op. 35.

3. The judgments against the employés of the California Steam Navigation Company may be released by remissions of the Secretary of the Treasury under the act of March 3, 1797 chap. 13. *Opinion of Dec.* 31, 1866, 12 Op. 103.

4. Statutory rules for the distribution of certain fines recovered under the internal-revenue acts of June 30, 1864, chap. 173; July 1, 1866, chap. 184; and March 2, 1867, chap. 16. *Opinion of Feb.* 11, 1869, 12 Op. 558.

5. Section 5293 of the Revised Statutes gives the Secretary of the Treasury power to remit fines, penalties, or forfeitures imposed by authority of any provision of law referred to in the first paragraph of that section, "*for the purposing or collecting any duties or taxes*," where the amount of the fine, penalty, or forfeiture does not exceed *one thousand dollars*, without the summary inquiry and statement of facts by a judge, as provided in section 5292 of the same statutes. *Opinion of Sept.* 25, 1874, 1 Op. 454.

6. But if the fine, penalty, or forfeiture was imposed by authority of any provision of law referred to in the same paragraph, "*relating to registering, recording, enrolling, or licensing vessels*," power is given the Secretary in the former section to remit the same, without the summary inquiry and statement mentioned only where the amount does not exceed *fifty dollars*. *Ibid.*

7. By section 4751 Rev. Stat., the Secretary of the Navy has power to mitigate any fine,

or forfeiture incurred under the pro- the sections designated therein; and er may be exercised by him as well e proceedings, civil or criminal, have instituted with his knowledge and rection as where they have been thus l. *Opinion of Jan.* 23, 1878, 15 Op.

ere a vessel was condemned and sold e of a United States court as a for- nder section 2874 Rev. Stat., for land- sunset certain cases of foreign gin and 'alued at more than $400, the proceeds le being still retained subject to the the court: *Held* that the owner and gee of the vessel are persons who in- he forfeiture within the meaning of 17 and 18 of the act of June 22, 1874, l, which authorize the Secretary of sury, after certain proceedings had, to ch forfeiture, "if in his opinion the ll have been incurred without willful e or any intention of fraud in *the persons incurring the forfeiture.*" *f March* 15, 1880, 16 Op. 473.

FISHING BOUNTIES.

a fishing-smack, having complied the conditions required by the law o fishing bounties except the return was captured on its way home by a te privateer and destroyed: *Held* that re and destruction constituted a loss ssel within the meaning of the act of 1824, chap. 152, and that the owner are accordingly entitled, under the s of that act, to the same bounty they ve been allowed had the smack re- port. *Opinion of May* 31, 1871, 13

FLORIDA BONDS.

bonds given by the Territory of or loans of money to provide for the f the inhabitants of and the suppres- Indian hostilities in that Territory, paid, under the joint resolution of , 1845, from the appropriation made by the acts of August 23, 1842, chaps. 183 and 192. *Opinion of May* 8, 1845, 4 Op. 373.

2. The amount that may be thus paid, however, under the authority of that resolution cannot exceed the appropriation. *Ibid.*

3. *Bona fide* holders of bonds for loans made to Florida for the suppression of Indian hostilities, which have not been paid by the authorities of Florida, or at the Treasury, may be paid for the same, if the appropriations made by the acts of Congress of August 23, 1842, chaps. 183 and 192, are sufficient. *Opinion of Jan.* 29, 1846, 4 Op. 466.

4. The payment made by the United States to the agent of the governor of Florida, which went to the bondholders, may be taken into account in adjusting the balance due. *Ibid.*

5. The United States are not liable for any losses on the public stock in which that payment was voluntarily invested by the agent who received it. *Ibid.*

6. Consideration of the liability of the United States to take up and pay certain outstanding war bonds of the Territory of Florida. *Opinion of Jan.* 12, 1857, 8 Op. 308.

FOREIGN COINS.

1. The Secretery of the Treasury is authorized to direct the computations of the values of foreign coins at the custom-houses, when such values are to be expressed in the money of account of the United States, to be made according to the values officially estimated and proclaimed agreeably to the 1st section of the act of March 3, 1873, chap. 268, excepting *only* the sovereign or pound sterling of Great Britain, the value whereof must be computed as the same is fixed by the 2d section of that act. (See NOTE, 14 Op. 357). *Opinion of Jan.* 8, 1874, 14 Op. 353.

2. The designation of the "first day of January," in the 1st section of the act of March 3, 1873, chap. 268, as the time for the performance of the duty thereby devolved upon the Secretary of the Treasury of making proclamation of the values of foreign coins annually estimated by the Director of the Mint, is not to be regarded as directory merely, but as a limitation upon the authority of the Secretary. He is authorized and required to make such

proclamation at the time designated, and at no other. *Opinion of March* 31, 1874, 14 Op. 382.

FOREIGN ENLISTMENT.

1. It is a settled principle of the law of nations that no belligerent can rightfully make use of the territory of a neutral State for belligerent purposes without the consent of the neutral Government. Hence the undertaking of a belligerent to enlist troops of land or sea in a neutral State, without the previous consent of the latter, is a hostile attack on its national sovereignty. *Opinion of Aug.* 9, 1855, 7 Op. 367.

2. A neutral state may, if it please, permit or grant to belligerents the liberty to raise troops of land or sea within its territory; but for the neutral state to allow or concede this liberty to one belligerent and not to all would be an act of manifest belligerent partiality and a palpable breach of neutrality. *Ibid.*

3. The United States constantly refuse this liberty to all belligerents alike, with impartial justice, and that prohibition is made known to the world by a permanent act of Congress. *Ibid.*

4. Great Britain, in attempting, by the agency of her military and civil authorities in the British North American provinces, and her diplomatic and consular functionaries in the United States, to raise troops here, committed an act of usurpation against the sovereign rights of the United States. *Ibid.*

5. All persons engaged in such undertaking to raise troops in the United States for the military service of Great Britain, whether citizens or foreigners, individuals or officers, unless protected by diplomatic privilege, are indictable as malefactors by statute. *Ibid.*

6. Foreign consuls are not exempted, either by treaty or the law of nations, from the penal effect of the statute. And in case of indictment of any such consul or other official person, his conviction of the misdemeanor, or his escape by reason of arranged instructions or contrivances to evade the operation of the statute, is primarily a matter of domestic administration, altogether subordinate to the consideration of the national insult or injury to this Government involved in the fact of a foreign Government instructing its officers to abuse, for unlawful purposes, the privileges which they happen to enjoy in the United States. *Ibid.*

7. The acts of Congress prohibiting foreign enlistments is a matter of domestic or municipal right, as to which foreign Governments have no right to inquire, the international offense being independent of the question of the existence of a prohibitory act of Congress. *Ibid.*

8. A foreign minister who engages in the enlistment of troops here for his Government is subject to be summarily expelled from the country, or, after demand of recall, dismissed by the President. *Ibid.*

9. Views on questions involved in the enlistment of troops by British officers in the United States. *Report to President of May* 27, 1856, 8 Op. 476.

FOREIGN GOVERNMENT.

See also CLAIMS, II; DRAFT OF FOREIGN GOVERNMENT.

I. *Reclamation.*
II. *Violation of Revenue Laws of.*

I. Reclamation.

1. The rule that, before a citizen of one country is entitled to the aid of his Government in obtaining redress for wrongs done him by another Government, he must have sought redress in vain through the judicial tribunals of that other Government, is inapplicable where (as in the case considered) the offending Government, by the acts of its proper organ, relieves the injured party from the obligation of pursuing such a course. *Opinion of Dec.* 28, 1871, 13 Op. 547.

2. The Government of Brazil is not responsible for damage resulting to a citizen of the United States from the alleged corruption of a municipal judge in that country in authenticating and ratifying the report of a board of surveyors upon a damaged vessel, though the charge were established. *Opinion of Dec.* 29, 1871, 13 Op. 553.

3. Where an officer with a party of armed men, acting under an order of a judicial officer

ort of Granada, seized an American
that port, kept possession of it a few
ıd then withdrew, pursuant to an order
ame judge, the seizure having been
the purpose of enforcing a supposed
ght: *Advised* that this Government
ot to make reclamation in behalf of
er, as it is presumable that if the pro-
were illegal the judicial tribunals of
ıa will afford redress. *Opinion of Jan.* 13 Op. 554.

iolation of Revenue Laws of.

American vessel, having been embar-
port of Brazil by competent authority,
awfully taken out of the port and out
lian waters by her master, without
t of the required charges. The Bra-
overnment requests that measures be
y this Government against the master
ss the injury to the fiscal interests of
esulting from his act: *Advised* that the
ged against the master was not a viola-
ıny statute of the United States, and
the absence of a statutory provision
ıle to the case, no prosecution therefor
maintained in the courts of the United
Opinion of March 13, 1879, 16 Op. 282.
here the master of an American vessel,
was under detention by the customs
ties at a port in Jamaica, escaped with
el, in violation of the British revenue
dvised that there is no statute of the
States under which the master is liable
cution in the courts of this country for
alleged. *Opinion of March* 13, 1879, 16

EIGN INTERCOURSE FUND.

und for foreign intercourse is an annual
aced at the disposal of the President to
its expenses; and he is limited in re-
an outfit only by the provision that it
ot exceed a year's salary. When the
ıas been paid, it is beyond the recall of
esident or Congress. *Opinion of June* 5,
l Op. 545.

FOREIGN MAILS.

See POSTAL SERVICE.

FORFEITURE.

See also BOUNTY, IV; CONTRACT, VI; CUSTOMS LAWS, X, XI; INTERNAL REVENUE, X; POSTAL SERVICE, V.

1. The President has no power (in the case presented) to remit the forfeiture of a bail-bond. *Opinion of Feb.* 20, 1843, 4 Op. 144.

2. He is invested with authority to remit judgments of forfeiture pronounced against vessels, their tackle and apparel, for infractions of the act of April 20, 1818, chap. 91, prohibiting the slave trade. *Opinion of May* 13, 1847, 4 Op. 573.

3. In certain cases, under the acts of Congress regulating the transportation of passengers in merchant vessels, forfeitures may be remitted by the Secretary of the Treasury. *Opinion of March* 24, 1854, 6 Op. 393.

4. The act of March 3, 1855, chap. 213, regulating the carriage of passengers in steamships and other vessels, and imposing penalties and punishment for contravention, is made applicable to ships abroad in sixty days in Europe, and six months in other parts of the world, and requires notice of the act to be given in all foreign ports through the Department of State: *Held* that where such notice had failed to be given in such foreign port, and the owner or master of a vessel had thus unconsciously offended, it was proper case for remission of forfeiture and for pardon of the master. *Opinion of Sept.* 11, 1855, 7 Op. 489.

5. The President has no general constitutional or statutory power to remit judgments obtained against sureties on forfeited recognizances taken in criminal proceedings before the courts of the United States. *Opinion of Nov.* 21, 1864, 11 Op. 124.

6. The act of June 17, 1812, chap. 100, authorizes the President to remit the forfeiture of recognizances taken in such proceedings in the District of Columbia. *Ibid.*

FORT SNELLING.

1. The Secretary of War had the power conferred upon him by law to make a contract for the sale of Fort Snelling, and having executed that power he was *functus officio*. *Opinion of Sept.* 28, 1857, 9 Op. 103.

2. The Secretary has no right to change the

terms of the contract in any particular whatever. *Ibid.*

FRANCHISE.

See also TERRITORIES.

The act of the legislature of the Northwestern Territory authorizing Briggs and another to erect a bridge over Will's Creek does not confer an *exclusive* privilege. *Opinion of July* 26, 1828, 2 Op. 107.

FRANKING PRIVILEGE.

1. Postmasters cannot lawfully receive, to be conveyed in the mail, any packet weighing more than three pounds, in any case whatever, except such as are specially provided for in the act of December 19, 1821, chap. 1, and the joint resolution of January 13, 1831. *Opinion of Dec.* 13, 1836, 3 Op. 164.

2. The taking a seat in a special session of the Senate called and held for executive business merely, and without any contemporaneous meeting of the House of Representatives, is not such a taking of a seat in Congress as will entitle a Senator to the exercise of the franking privilege. *Opinion of March* 2, 1837, 3 Op. 171.

3. The franking privilege of Senators and Representatives in Congress commences with the term for which they are respectively elected, or from the period of their election in cases where that occurs after the commencement of a term. *Opinion of April* 23, 1851, 5 Op. 358.

4. The privilege is given to them as members of Congress during their terms of service, without any reference to the time when they take their seats or the oath of office. *Ibid.*

5. So far as relates to this purpose, they are members of Congress by their election and acceptance. *Ibid.*

6. Letters from officers of national banking associations employed as depositaries of public moneys, on business arising from that employment, are not transmissible through the mail free of postage to the Treasury Department. *Opinion of March* 19, 1864, 11 Op. 23.

7. Under the postal act of March 3, 1863, chap. 71, section 42, the head of a Bureau in one of the Executive Departments can exercise the authority to send mail matter free of postage by impressing his name on the outside c the package to be mailed, with an engrave stamp, as well as by writing his signatur thereon. *Opinion of March* 26, 1864, 11 Op. 31

8. The head of a Bureau entitled to fran mail matter cannot delegate to another perso the power to frank such matter by using hi stamp. *Opinion of March* 30, 1864, 11 Op. 3

9. The Postmaster-General may, by regul tion, authorize officers in or belonging to th various Executive Departments legally desi nable as chief clerks, whether of the Depar ments proper or of Bureaus therein, to fran official communications. (See NOTE.) *Opi ion of March* 19, 1869, 13 Op. 2.

10. The franking privilege is a personal pri ilege, and the selection of the person to whos matter shall be sent free through the mails ca not be delegated by the person enjoying th privilege to any other person. *Opinion of Oc* 21, 1869, 13 Op. 157.

11. Members-elect of either House of Co gress are, under section 7 of the act of Mar 3, 1877, chap. 103, entitled to exercise the pri ilege of franking public documents as soon a the term for which they were elected com mences, although no session of the Congre has convened and they have not qualifie The language used in that section is to be co strued with reference to similar legislation fo merly existing (of which a review is given i the opinion), and must be interpreted as i tended to restore the franking privilege, so f as it relates to public documents, for the ter for which the members are elected, with th additional period therein stated. *Opinion Feb.* 26, 1879, 16 Op. 271.

FREEDMEN'S BUREAU.

1. It is the duty of the Commissioner of th Freedmen's Bureau to take control only such portions of the lands described in th act of March 3, 1865, chap. 90, as he may, the exercise of his authority, set apart for th use of loyal refugees and freedmen. *Opini of June* 22, 1865, 11 Op. 255.

2. The act of July 6, 1868, chap. 135, co tinuing in force the Freedmen's Bureau, d not require that officers "retained" by th Commissioner shall be in terms reappoint *Opinion of Sept.* 12, 1868, 12 Op. 490.

3. The Freedmen's Bureau cannot be regarded as an agent or attorney within the meaning of the joint resolution of July 26, 1866 [No. 86], fixing the fees for collecting bounty claims of colored soldiers, &c., in cases where such claims are collected by it, and therefore cannot retain for the Government the prescribed fees for such service, though the claimants so request. *Opinion of Aug.* 17, 1871, 13 Op. 509.

4. The Commissioner of the Freedmen's Bureau is liable for all losses sustained by the Government through the default of subordinate disbursing officers or other persons employed by him in the disbursement of the moneys intrusted to him under the joint resolution of March 29, 1867 [No. 25]. *Opinion of July* 3, 1873, 14 Op. 269.

5. The resolution of March 29, 1867 [No. 25], was passed for the protection of a particular class of claimants described therein, its specific object being to more effectually secure to such claimants, through the instrumentality of the Freemen's Bureau, the money due them from the Government in cases where claims were prosecuted in their behalf by agents or attorneys. *Opinion of Oct.* 24, 1874, 14 Op. 474.

6. To enable the Freedmen's Bureau to discharge the duty thereby devolved upon it, the checks and certificates issued at the Treasury on the settlement of such claims were required by the resolution to be made payable to the Commissioner of the Bureau. *Ibid.*

7. The money drawn from the Treasury by the Commissioner upon those checks and certificates was *public money*, and retained that character while it remained in his hands, or until disbursed by him or his subordinates as directed in the resolution. *Ibid.*

8. By the provisions of the third section of the resolution the Commissioner, and those of his subordinates who were charged with the duty of paying out this money to the parties entitled to receive it, were subjected, in respect of the custody and disbursement of such money, to the same degree of responsibility and accountibility to which a disbursing officer of the Army was subject in respect of the public money in his hands. *Ibid.*

9. Therefore, the investment in Government securities of the public money in their hands, made by the Commissioner and the chief disbursing officer of the Bureau, rendered them liable to severe penalties imposed by the acts of August 6, 1846, chap. 90, and June 14, 1866, chap. 122, and to be criminally prosecuted therefor under these acts. *Ibid.*

10. But though such investment was prohibited by the statutes last referred to, the profits derived therefrom in the shape of interest and premium inured solely to the United States; they were public money, and should have been accounted for by those officers the same as other public money. Neither of them could legally apply these profits to reimbursing himself for erroneous or double payments made to claimants, or to paying employés of the Bureau extra compensation, &c. *Ibid.*

11. The approval by the Second Comptroller of the application of the public money to the purposes just mentioned is no protection to the Commissioner and chief disbursing officer of the Bureau, unless such approval was given by the Comptroller while officially passing on their accounts; in which case the action of the Comptroller would be conclusive until such accounts are reopened or the settlement thereof set aside on some valid ground, such as fraud, mistake, &c. *Ibid.*

12. Those officers, notwithstanding a criminal prosecution against them on account of the aforesaid investment may now be barred by the limitations of the statute, remain civilly liable for so much of the public money received by them as has not been lawfully accounted for. *Ibid.*

13. Where public funds were put into the hands of a disbursing agent of the Freedmen's Bureau for the purpose of paying certain claimants against the Government of the class designated in the resolution of March 29, 1867 [No. 25], and the agent, by direction of any such claimant, remitted to the latter the amount of his claim by express or draft: *Held*, first, that though this mode of payment is not in conformity with the directions of the statute, yet if the claimant actually received the money his claim is discharged; second, that in case the amount were sent by express, this, being done at the claimant's request, would also constitute a discharge of the claim; third, that in case the amount was sent by draft, the claim still subsists unless the draft has been paid, and the fact that it is yet outstanding is (in view of the provisions of said resolution)

immaterial. *Opinion of Oct.* 29, 1874, 14 Op. 485.

14. In the cases mentioned neither the said agent nor any other officer of the Bureau would seem to incur any special pecuniary liability to the Government in consequence of the action of the agent. *Ibid.*

15. But where the disbursing agent has remitted funds due claimants to the attorneys of the latter, under instructions from such attorneys given without the knowledge or consent of the claimants, in this case, should the attorneys have failed to pay over the money, the Government would be still liable to the claimants for the amounts due them, and the disbursing agent would be liable to the Government for the loss it may thus sustain. *Ibid.*

16. The responsibility of the Commissioner of the Freedmen's Bureau would also extend to such loss, under the provisions of the aforesaid resolution. *Ibid.*

FREEDMAN'S SAVINGS AND TRUST COMPANY.

1. Rights, duties, and responsibilities of the commissioners appointed under the 7th section of the act of June 20, 1874, chap. 349, to wind up the business of the Freedman's Savings and Trust Company, considered and commented on. *Opinion of March* 20, 1875, 14 Op. 549.

2. The commissioners thus appointed having become invested with the title to the property of said company and taken upon themselves the performance of their trust, it is not competent to either the board of trustees of said company or the Secretary of the Treasury to accept the resignations of the former, and relieve them from the duties and responsibilities which they have assumed. *Ibid.*

FUNDED DEBT.

See also BONDS OF THE UNITED STATES.

1. It is the duty of the commissioner of loans to forbear to act in cases where the holder of certificates of the funded debt, or his attorney, presents himself to receive dividends or to transfer the stock after notice, by attachment or private caveat, that an adverse claim has been filed in the office, until the law shall have settled the rights of the parties a a proper direction to the course of hi *Opinion of June* 16, 1828, 2 Op. 90.

2. The certificates of the funded made payable to the holder or his a They are therefore on their face ass Being properly assigned, the assigne in the place of the first holder. Holdi tificate, with an assignment indorse paper itself, is *prima facie* evidence o ship. But it is only *prima facie* evid cause a valid assignment may be m separate paper which will pass the le without the manual tradition of the ce *Ibid.*

3. In respect to private caveats, u caveators shall state the causes and gr them, so that they may be conside judged of by the commissioner, the be disregarded; so, also, where the ca grounds are manifestly untenable. *I*

FURLOUGH.

See ARMY, XX.

GENERAL AVERAGE.

1. The cargo of the United States, at Alexandria for Valparaiso, on board forced by stress of weather to throw o a portion of her freight to lighten her an put back to Norfolk, incurring expens nature of general average, is bound to ute to the general average; but whils the opinion of the Attorney-General, t reasonable doubts respecting some charges in the case under consideration. *ion of March* 31, 1823, 5 Op. 757.

2. Where a vessel at sea is in immin ger, and a part either of the vessel or voluntarily sacrificed to save the rest, sacrifice is successful, the portion sav contribute *pro rata* to make the lo *Opinion of July* 19, 1860, 9 Op. 447.

3. In a case of involuntary strand direct and immediate consequences w sulted therefrom cannot be brought i eral average; but the owners of the c bound to contribute by way of general their proportion of expenses volunta

curred, and sacrifices voluntarily made, afterwards by the vessel to avert the peril surrounding vessel and cargo. *Ibid.*

GENERAL LAND OFFICE.

See also PUBLIC LANDS.

1. The act of 4th July, 1836, chap. 352, places the General Land Office under the supervision of the Secretary of the Treasury. If there be doubts of its effect, it is at any rate competent for the President to exercise his control by directing the Secretary of the Treasury to superintend the same, under the usual subordination to the President. *Opinion of July* 4, 1836, 3 Op. 137.

2. The proviso in the appropriation act of March 14, 1862, chap. 41, limiting the Secretary of the Interior in the use of the appropriation under the act of March 3, 1855, chap. 207, to the allowance of $1,200 per annum for office work, &c., does not apply to the salaries of the regular additional clerks in that branch of the General Land Office. *Opinion of Sept.* 3, 1862, 10 Op. 330.

GRANT TO THE UNITED STATES.

1. The United States cannot divert land granted for the express and single purpose of a light-house site, to any use wholly unconnected with the object of the grant, without violating the spirit and terms of the cession. *Opinion of Nov.* 15, 1819, 1 Op. 321.

2. The president and directors of the Navy Yard Bridge Company are competent to execute a deed of said bridge to the United States, pursuant to a resolution instructing them to do so, passed at a regular meeting of the stockholders, upon obtaining the concurrence of the president and directors of the Eastern Branch Bridge Company; but they cannot convey the individual stock of said company unless the shareholders shall have conveyed it to them. *Opinion of Nov.* 15, 1848, 5 Op. 53.

3. If the several stockholders shall convey their shares to the individuals who are to execute a deed to the United States, and the latter shall execute a deed as well for themselves as the company, a valid transfer of the bridge and the stock will have been effected. *Ibid.*

4. The patent and deed of conveyance of certain lands situate at the mouth of the Muskegon River, in the State of Michigan, appear to give the United States a valid title to the same. *Opinion of Oct.* 8, 1850, 5 Op. 267.

5. The reservation in the deed of Simeon Leland and wife, conveying David's Island, in Long Island Sound, to the United States, of "the right of ferriage to and from said premises," secures to the grantors a right to use so much of the island as may be needed for the purpose of a ferry, whether public or private, and for no other purpose. *Opinion of June* 2, 1871, 13 Op. 426.

6. The Government, however, is under no obligation to use a ferry kept by the grantors, but may, simply as a riparian proprietor, establish one for its own accommodation. *Ibid.*

7. It may also allow others than the grantors to land boats at the island, and to transport thereto and therefrom passengers or freight, and may avail itself of the facilities for communication thus afforded. *Ibid.*

8. Parties having proposed to donate to the United States certain land for the extension of the pier and breakwater at Oswego, New York, upon the following conditions, viz, that the work "shall be constructed at or near the point, and substantially upon the plan adopted and recommended by the board of engineers," &c.: *Advised* that, if the latter condition is omitted, the donation may properly be accepted, even though the former condition is retained, but not otherwise. *Opinion of June* 24, 1871, 13 Op. 465.

9. The Secretary of War has authority under the provision in the act of March 3, 1879, chap. 181, making an appropriation for an ice harbor at the mouth of the Muskingum, in the State of Ohio, to accept the grant made by the legislature of that State of the right to take possession of the dam belonging to the State, without further legislation by Congress. So, also, a grant from the city of Marietta of the use of the adjacent land owned by the city. *Opinion of Oct.* 4, 1879, 16 Op. 387.

10. The estate which the United States would hold in the dam, by virtue of the grant of the State, would be in the nature of an easement; yet it would be sufficient for the

of the latter has been only partially relinquished, citizens of the United States cannot divest themselves of allegiance to our Government by a residence among them, nor even by becoming members of the Choctaw Nation. *Opinion of Dec.* 26, 1834, 2 Op. 693.

2. And the political relation of negro slaves owned by white men residing in the Choctaw country depends on that of their masters. *Ibid.*

3. The Cherokee fund is not liable for damages arising from the non-fulfillment by the Government of contracts made for the removal of, and supplies for, the Cherokee Indians. *Opinion of March* 20, 1839, 3 Op. 431.

4. Indians at peace with the United States are in no received sense of the word "an enemy," and cannot be judicially considered as embraced within it. *Opinion of Aug.* 13, 1842, 4 Op. 81.

5. It is not the duty of the Executive to pay over the moneys appropriated in the third section of the act of August 12, 1848, chap. 166, to the Creek Nation of Indians, except on the condition that said nation shall first execute a full discharge of principal and interest on account of the sum of $250,000. *Opinion of Oct.* 28, 1848, 5 Op. 46.

6. The form of the release of the claim of the Creeks upon the Government, which has been submitted to the Commissioner of Indian Affairs, answers the requirements of the third section of the act of 12th of August, 1848, chap. 166, if it satisfactorily appear that the chiefs and headmen who have executed it are in fact the chiefs and headmen of the Creeks, and constitute a majority of their national council. *Opinion of March* 21, 1849, 5 Op. 79.

7. The power of attorney, authorizing Joseph Bryan to receive certain moneys from the United States, is sufficient for its purpose if it appear that it was executed by those chiefs and headmen who had authority to execute such an instrument. *Ibid.*

8. The moneys appropriated by section 4 of the act of August 12, 1848, chap. 166, in execution of the treaty of 24th of January, 1826, with the Creeks, may be paid to the chiefs and headmen of that nation upon their executing a release in full for all claims for principal and interest on account of the emigration of 1,300 Indians, &c. *Opinion of May* 10, 1849, 5 Op. 98.

9. Had Congress intended to exact a rele from the individual Indians, they would ha doubtless expressed that intention in the la *Ibid.*

10. The moneys appropriated by the acts 30th September, 1850, chap. 91, and 27th Fe ruary, 1851, chap. 12, are to be paid to the In dians referred to in the twelfth and fifteenth articles of the treaty of 1835, and in the ninth and tenth articles of the treaty of 1846, con cluded with the Cherokees. *Opinion of Apr* 16, 1851, 5 Op. 320.

11. The distribution is to be made *per capit* and equally among all the individuals residin east, and also all those residing west other tha the "old settlers" found to be in existence a the time of the distribution, each being co sidered as entitled in his own right, and n by representation of another who is dead; an the payment of these distribution shares is t be made to the individuals entitled, if of com petent age; the shares of children to be paid t heads of families to which they belong, whethe those heads of families be male or female, fathe or mother, or persons standing *in loco parenti. Ibid.*

12. The whole number of the Cherokees whom payments are to be made *per capita*, an the identity of the persons to whom distrib tion is to be made, are questions of fact to determined in such manner as the Secretary the Interior, by and with the advice and co sent of the President, shall deem discre *Ibid.*

13. No part of the money appropriated *per capita* payments to the Cherokees can paid otherwise than by an equal distribut of it among those Indians individually. (S opinion of 23d of June, 1851, 5 Op. 37 *Opinion of Dec.* 2, 1851, 5 Op. 502.

14. Under the act of 3d March, 1852, ch 11, it is competent for the superintendent Indian affairs in California to examine cla and accounts for furnishing provisions to Indians. *Opinion of July* 21, 1852, 5 Op. 5

15. Indians are not capable of pre-empt the public lands of the United States. *Opi ion of July* 5, 1856, 7 Op. 746.

16. Half-breed Indians are to be treated Indians in all respects, so long as they re their tribal relations. *Ibid.*

17. Where a certain class of Indians are titled to a certain sum per head, but the

propriation to make the payment is not large enough to allow all of them that sum: *Held* that it must be divided among them *pro rata*. *Opinion of June* 10, 1857, 9 Op. 48.

18. The act of March 3, 1865, chap. 127, withdrew from the Secretary of the Treasury the authority given him by the act of March 2, 1861, chap. 85, to issue to the Choctaw tribe of Indians bonds of the United States to the amount of $250,000. But that authority was revived by the treaty with said tribe of April 28, 1866, under which the Secretary may lawfully issue the bonds to the Choctaws, as provided in the above-mentioned act of March 2, 1861. *Opinion of Dec.* 15, 1870, 13 Op. 354.

II. Trade and Contracts with.—Intercourse Laws.

19. The Cherokee Nation of Indians have not the right to impose taxes on persons trading among them under the authority of the United States. *Opinion of April* 2, 1824, 1 Op. 645.

20. Neither the history and condition of the Indians, the relations which the United States bear to them, nor the treaties which subsist between them and our Government, permits the power of taxation to be considered as one between equal sovereigns. *Ibid.*

21. Trade with the Cherokees has been provided for by treaty stipulations, giving to Congress the sole and exclusive right of regulating trade with them and managing their affairs as shall be deemed proper. The right thus conferred on the United States is sole and exclusive; wherefore, neither the Cherokees nor any other nation had the right thereafter to touch the subject which was thus solely and exclusively given to the United States. *Ibid.*

22. No citizen of the United States can obtain exemption from the laws of the United States which regulate intercourse with the Indians by entering their territory within our limits and becoming one of them by adoption. *Opinion of Dec.* 21, 1830, 2 Op. 402.

23. Although the claim of an attorney for the Cherokees cannot be paid out of funds due them under the ninth article of the treaty, yet, if the Department shall be satisfied that the contract between him and his principal is free from fraud, and his claim is for a just compensation for services rendered, the Department ought to recognize him as having an interest in the fund and pay him accordingly. *Opinion of March* 26, 1840, 3 Op. 504.

24. Payments may be made directly to the Indians, yet care should be taken that those who have rendered them service in collecting evidence, &c., be not defrauded. *Ibid.*

25. All executory contracts of individual Indians for the payment of money or fees are null by statute, but not of necessity the executory contracts of a nation or tribe of Indians. *Opinion of June* 13, 1853, 6 Op. 49.

26. The President may, or not, in his discretion, recognize the pecuniary engagements of a tribe of Indians. *Ibid.*

27. The President will examine into all such contracts, and confirm them, or not, according to what appears the legality and sufficiency of their consideration and of their relation to the interests of the Indians. *Ibid.*

28. It is in the discretion of the President whether, and at what time, if at all, engagements of indebtedness made by tribes of Indians to citizens of the United States shall be allowed and paid by the Government. *Opinion of May* 15, 1854, 6 Op. 462.

29. The acts of Congress regulating intercourse with the Indians are in full force in Oregon. When questions arise as to the applicability there of a particular clause of those acts, the question depends on the subject, and is wholly independent of any reference to a supposed test of the convenience or the assumed rights of the whites as against the Indians. *Opinion of June* 22, 1855, 7 Op. 293.

30. By the seventh section of the act of February 27, 1851, chap. 20, all laws then in force concerning trade with the Indians were extended to New Mexico; and parties arrested or property seized there by the military authorities, for violation of those laws, should be placed in the custody of the marshal of the Territory, to be proceeded against according to law. *Opinion of July* 19, 1871, 13 Op. 470.

31. If the parties arrested were engaged in supplying ammunition to Indians in open and notorious hostility to the United States, who properly came within the description of public enemies, in that case they would seem to be amenable to trial and punishment by court-martial under the fifty-sixth article of war (act of April 10, 1806, chap. 20.) *Ibid.*

32. A trader at a military post in the Indian

country cannot lawfully maintain a traffic with the Indians unless he be properly licensed for such trade. *Opinion of Dec.* 11, 1879, 16 Op. 403.

33. License to trade with the Indians at the establishments of post-traders cannot be given by the military authorities. *Ibid.*

III. Lands of.—Trespass.—Sales and Conveyances by.

34. A right of occupancy during pleasure has always been conceded by Europeans to the North American Indians; wherefore, the question whether purchasers from the State of Massachusetts may enter upon the Seneca lands, depends altogether on the character of the title which the latter retain in them. *Opinion of April* 26, 1821, 1 Op. 465.

35. The President of the United States may properly give his consent and approval to the conveyance by will made by Indians La Gros and Waiseskea, his daughter, to General Tipton, to four sections of land reserved to said La Gros in the treaty with the chiefs and warriors of the Miamies, concluded 23d October, 1826, subject to all legal questions in respect to the capacity and right to make conveyances by will, and to the execution, validity, and effect of those instruments. *Opinion of March* 29, 1834, 2 Op. 631.

36. Whether Indian reservees are capable in law of devising their reservations to third persons in any case, *quære*. *Ibid.*

37. Sales by the Creeks, where purchasers, either by force or fraud, abstract from them the purchase money, are fraudulent and void. *Opinion of July* 10, 1837, 3 Op. 259.

38. So, also, are sales approved by the President where the reservee was personated by other Indians, and patents may be withheld. *Ibid.*

39. Patents may issue directly to a white person, being the assignee of a Creek reservee, to whom the tribe had assigned a portion of the twenty-nine sections reserved under the sixth article of the Creek treaty of 1832. *Opinion of Aug.* 28, 1837, 3 Op. 288.

40. Indian tribes have not been conceded the natural capacity to hold absolute title to lands, except in cases specially provided for by treaty; wherefore, the title of the Brothertown Indians to the land secured to them by the treaties with the Menomonees is not a fee simple, but only such a right of occupancy as was previously possessed by the Menomonees themselves. *Opinion of April* 4, 1838, 3 Op. 322.

41. Whatever may have been the literal construction of the Cherokee treaty of 1817 in regard to the rights of reservees, provided for therein, to locate their lands within the limits of the cession then made, that right, after the subsequent acts of the parties in the execution of the treaty, and for the purposes of the Cherokee treaty of 1835, must be conceded to exist. *Opinion of Aug.* 27, 1838, 3 Op. 368.

42. An assignment by P. P. Pitchlynn of a reservation in the treaty in favor of Peter Pitchlynn, where there is no doubt of the identity of the person, is good, as the law knows of but one Christian name. *Opinion of May* 17, 1839, 3 Op. 467.

43. Where a Choctaw reservee conveyed his reservation to D, in trust to sell and apply the proceeds to the payment of a debt owing by the reservee to A and R, who, thereupon, sold a portion of the land, and with the proceeds paid a part of the said debt; and at this stage of the affair the reservee died, leaving two children, whose guardian, under pretense that he was acting for the children, bought the residue at a sum far below its value, who, after taking H into partnership with him, conjointly with him sold the land to Banks and Lewis without the consent of the President, and refused to pay over any part of the proceeds to said children: *Held* that the President ought not to give his approval to the sale to said Banks and Lewis, as it would probably deprive the children of their inheritance. *Opinion of April* 18, 1840, 3 Op. 518.

44. Where Creek reservees died within the five years during which their reserves were to be withheld from sale, and the lawful administrators sold the reserves, and paid over the proceeds (less the expenses) to the Indian widows, as the heirs, and the question of other heirs being now raised, in opposition to the confirmation of the sales to the purchasers, who have paid the consideration money therefor once in full: *Held* that the purchasers are entitled to the confirmations which they ask, and should not be required to pay a second time any portion of the purchase money. *Opinion of July* 27, 1840, 3 Op. 578.

45. If the distribution of the proceeds were

illegal, it ought in no wise to affect the *bona fide* purchasers. *Ibid.*

46. Heads of Creek families who otherwise would be entitled to a patent for land in Alabama, have not forfeited their right to the same by having become residents and citizens of Georgia before the expiration of five years from the time when the reservation was selected. *Opinion of Aug.* 3, 1840, 3 Op. 585.

47. The President may properly confirm sales of Creek reservations, made by administrators pursuant to the orders of courts having jurisdiction, whether the distribution of the proceeds among the heirs shall have been correctly made or not, provided the purchasers shall have paid in the purchase money in good faith to the administrators or legal representatives. *Opinion of Dec.* 3, 1840, 3 Op. 596.

48. But where purchasers have withheld any portion of the purchase money on any pretense, or the administrators themselves were the purchasers, and have not accounted for the purchase money, sales ought not to be confirmed. *Ibid.*

49. The Senecas are entitled to the possession of their hunting grounds, as well as their cultivated lands, until the time limited by the treaty with them for their voluntary removal. *Opinion of March* 2, 1841, 3 Op. 624.

50. The Menomonee Indians have no reasonable pretensions to lands west of Black River, which they indicated, in the treaty of 1825, as the extent of their claims in that direction, nor to lands beyond the limits which they specified and claimed in the treaty of 1831; and, as the United States have since purchased them of other tribes, the Government is not required to pay for them again. *Opinion of Sept.* 13, 1848, 5 Op. 31.

51. Nor have those Indians a title to the large triangular tract within those limits adjacent to, and west of, the line established between them and the Chippewas by the treaty of 1827, they having relinquished all claims to the Chippewas. *Ibid.*

52. But subject to these restrictions they may cross the Wisconsin River into the territory claimed by the Winnebagoes, and show a better title than theirs if they have one. *Ibid.*

53. A deed of land purporting to be by a certain Indian, and approved by a former President, proves not to have been executed by him: *Held* that the new President may treat that deed as a nullity and approve a new deed duly executed by such Indian. *Opinion of Sept.* 10, 1854, 6 Op. 711.

54. The Kansas Nation of Indians and the half-breed reservees are in lawful possession, and have a perfect right to enjoy the peaceful occupation of their lands. *Opinion of Sept.* 26, 1857, 9 Op. 110.

55. The power of the Government ought to be used to protect them against all lawless trespassers, without reference to the question whether their title be a fee or only a usufruct. *Ibid.*

56. The trade and intercourse law (act of June 30, 1834, chap. 161) is applicable to the Indian reserved land in Kansas and Nebraska, and ought to be executed for their protection. *Ibid.*

57. The Secretary of the Interior has no power, under the act of March 3, 1859, chap. 82, to confirm any sale of lands allotted to the Wea Indians, in Kansas, by the treaty of May 30, 1854, made before the passage of that act. *Opinion of May* 13, 1862, 11 Op. 253.

58. The case of a proposed deed by one Pe-wo-mo, a Pottawatomie Indian, covering part of the tract reserved to Billy Caldwell (under whom the said Indian claimed title by inheritance) by the treaty of July 29, 1829, with the Chippewa, Ottawa, and Pottawatomie Indians, considered in connection with an application to the President for his approval of the deed, and also certain inquiries, viz, as to the right of Pe-wo-mo in the premises, the execution of the papers, and the authority of the President to approve the deed, answered. *Opinion of April* 24, 1879, 16 Op. 310.

59. Proposed deed of Pe-wo-mo, a Pottawatomie Indian, granting certain land near Chicago, Ill., considered with reference to objections suggested by the Commissioner of Indian Affairs. *Advised* that the President, when satisfied that the consideration is a fair one, should approve the deed and transmit it to the Indian Bureau, with directions that the Commissioner deliver the same upon satisfactory evidence that the consideration has been either paid or secured to the Indian. *Opinion of May* 10, 1879, 16 Op. 325.

60. *Semble* that where any stock of horses, mules, or cattle are driven or conveyed so near to Indian lands that from the nature and habit of the animals they will probably go upon

such lands, especially where the circumstances show an intent on the part of the person so driving or conveying to have them go there, if the cattle should be found upon the lands without the consent of the tribe, such person would be liable to the penalty imposed by section 2117 Rev. Stat. To incur that penalty it is not necessary that the stock be actually driven upon the Indian lands; it is sufficient if they are so driven as to "range and feed" thereon. *Opinion of Oct.* 6, 1880, 16 Op. 569.

IV. Annuities.—Trust Funds of.—Investments for.

61. The Chickasaw invested stocks belonging to the fund created by the treaty of October 20, 1832, cannot be transferred to the Choctaws in payment of the land purchased of them without the previous consent of the President and Senate. *Opinion of Nov.* 12, 1840, 3 Op. 591.

62. The general assent of the President and Senate to the stipulations of the convention between the Chickasaws and Choctaws, by which the former were to pay the latter $530,000, cannot be regarded as such an assent as to authorize an application of the funds of the Chickasaws to the payment suggested. *Ibid.*

63. It is doubtful whether Indian annuities granted by the Government ought to be regarded as legally assignable, unless made so by law. *Opinion of Jan.* 8, 1851, 5 Op. 285.

64. Investments in behalf of the Indians, provided by treaty to be placed in stocks of the United States bearing interest at 5 per cent., may, in the absence of any such stock, be invested in stocks bearing interest not less than 5 per cent., but only stocks of the United States. *Opinion of March* 21, 1853, 6 Op. 2.

65. The treaty with the Wyandots requires that certain funds of that tribe shall be invested in United States stock, and the act of September 11, 1841, chap. 25, contains the same command. *Opinion of June* 10, 1857, 9 Op. 45.

66. The funds of the Wyandots can therefore not be invested otherwise than in stock of the United States, though the high price which that stock commands in the market may justify the Secretary of the Interior in not making any investment at all for the present. *Ibid.*

67. The treaty with the Delawares requires the investment to be made "in safe and profitable stocks." Any stocks wh this description may be taken f

68. No part of the amount a the act of March 3, 1865, cha benefit of the Miami Indians be paid to persons other than t in the corrected list made by t the Interior under the act of *Opinion of Oct.* 26, 1865, 11 Op.

69. In the administration of priated by the act of March 2, 1 for the Indiana Miamies, the in the list referred to in the am treaty of June 5, 1854, betwe States and the Miami Indians, cessors and representatives, as the amendment, are the sol *Opinion of Sept.* 20, 1867, 12 O

70. The principal of the Choc under article 13 of the treaty o cannot be drawn upon without tion of Congress. *Opinion of O* Op. 516.

71. The investment in bonds Virginia, in 1851, of the mone the Creek orphan fund arising bonds of the State of Alabama, the part of the President; he quired, by section 25 of the ac 11, 1841, chap. 25, to make s in stocks of the United State *June* 6, 1878, 16 Op. 31.

72. That error cannot now the Interior Department. It i determine whether the loss the is one which should be borne States. *Ibid.*

V. Employment of, in Co-o Troops.

73. The Navajo Indians ha co-operate with the United Stat the Apaches if the military auth and subsist them: *Advised* (c the view of the General of the statutory provision exists unde dians can be armed and subsist *Opinion of Jan.* 29, 1880, 16 O

VI. Hostilities.—

74. A public war, within the Constitution and of the Rules

War (act of April 10, 1806, chap. 20), has existed with the Seminoles since the day Congress recognized their hostilities and appropriated money to suppress them. *Opinion of March* 9, 1838, 3 Op. 307.

75. When any Indian tribes are carrying on system of attacks upon the property or persons, or both, of the settlers upon our frontiers, or of the travelers across our Territories, and the troops of the United States are engaged in repelling such attacks, this is war in such a sense as will justify the enforcement of the Articles of War against persons who are found relieving the enemy with ammunition, &c. *Opinion of July* 19, 1871, 13 Op. 470.

VII. Jurisdiction of Indian Courts.

76. The Choctaws have neither jurisdiction nor authority to pronounce and execute a sentence of death upon a slave of a white man residing among them, for the reason that the treaty limits their power to the government of the Choctaw Nation of red people and their descendants. *Opinion of Dec.* 26, 1834, 2 Op. 693.

77. A white man, although he may have been adopted by Chickasaws or Choctaws, does not become subject in criminal matters to the jurisdiction of the courts of the Choctaw Nation. *Opinion of May* 23, 1855, 7 Op. 174.

78. But in matters of civil jurisdiction, arising within the Nation, its courts have jurisdiction over a white man who has voluntarily made himself a Chickasaw by intermarriage and exercise of all the rights of a Chickasaw, and where the question concerns property the proceeds of a head-right granted to him as a Chickasaw. *Ibid.*

INDIAN TERRITORY.

1. The Chickasaw Indians, in conceding to resident Choctaws the treaty privilege of citizenship as required by treaty, were under no obligation to concede to such Choctaws the right to participate either as electors or elected in the government of the Chickasaw Nation. *Opinion of Jan.* 7, 1857, 8 Op. 300.

2. Distinction between citizenship and electorship pervades the public law of the United States. *Ibid.*

3. The internal-revenue system of the United States has not, in any instance or for any purpose, been extended over the Indian country. *Opinion of July* 24, 1867, 12 Op. 208.

4. Cotton raised in the Choctaw Nation, by an Indian of that nation, is not liable to taxation, under the internal-revenue laws, either while in the Indian country, or in transit through any collection district, or in the collection district where it may have been found or may have been sold. *Ibid.*

5. As between the Missouri, Kansas and Texas Railroad Company and the Missouri River, Fort Scott and Gulf Railroad Company, the right under the acts of Congress and the treaties with the Indians to construct a railroad through the Indian Territory, from the southern boundary of Kansas, belongs to the former company. *Opinion of July* 21, 1870, 13 Op. 285.

6. Property belonging to an Indian may be seized in the Indian Territory for a violation of the internal-revenue laws. *Opinion of Dec.* 28, 1871, 13 Op. 546.

7. A military officer, unless he be an Indian agent, or be called upon to act by such agent, has no power to arrest fugitives from justice in a State who have escaped into the Indian Territory. Such persons may be removed from the Territory as intruders, and surrendered to the State authorities, by the proper Indian agent. *Opinion of Jan.* 23, 1877, 15 Op. 601.

INFORMERS.

See also CUSTOMS LAWS, XII; INTERNAL REVENUE, XI.

1. Live-oak timber cut in violation of law for the purpose of transportation is not subject to forfeiture, so as to give informers a right to a distributive portion of it; such timber being all the while, in law, the property of the United States. *Opinion of Sept.* 2, 1843, 4 Op. 217.

2. Informers are only entitled to a share of the penalties and forfeitures recovered for the cutting, destroying, or removing live oak, red cedar, &c., from the public lands, not to any part of the timber. *Opinion of Oct.* 2, 1844, 4 Op. 339.

3. A collector of customs may become an informer and receive a portion of the penalties

under section 2 of the act of July 7, 1838, chap. 191, in relation to steamboats, and under the acts prohibiting the slave trade. *Opinion of Nov.* 9, 1859, 9 Op. 400.

4. In the case of moneys paid after August 1, 1866, in lieu of fines, penalties, and forfeitures, without suit, or before judgment, in pursuance of compromises made before that date, the informers are only entitled to share according to the provisions of the act of July 13, 1866, chap. 184. *Opinion of Nov.* 9, 1866, 12 Op. 87.

INSOLVENT DEBTOR.

1. The act of 6th of June, 1798, chap. 49, requires an assignment of the debtor's estate, real and personal, as a preliminary to his discharge. *Opinion of May* 26, 1820, 5 Op. 727.

2. The discharge of a principal debtor under the act of 3d March, 1817, chap. 114, does not discharge the sureties of such debtor. *Opinion of Dec.* 7, 1822, 5 Op. 746.

3. The term "insolvent debtors," contained in the act of Congress of March 2, 1831, chap. 62, means persons who were in a state of known insolvency, manifested by some notorious act of bankruptcy on or prior to the 1st of January, 1831. *Opinion of July* 28, 1831, 2 Op. 451.

4. The release of one of two partners, or of one of two or more obligors in a custom-house bond, will discharge the other or others, unless the latter execute a proper instrument preserving their liability. *Ibid.*

5. Applications must be made, and the oath or affirmation necessary must be taken, not by an attorney, but by the debtor himself. *Ibid.*

6. Where acts are done by a debtor to prevent the legal priority of the United States from vesting, and to enable him, in contemplation of legal insolvency, to dispose of his property so as to secure other and more favored creditors, the United States being thereby deprived of their legal priority, the law withholds from such debtor the release which it is a matter of indulgence and favor to grant. (See opinion of July 28, 1831, 2 Op. 451.) *Opinion of Sept.* 1, 1831, 5 Op. 762.

7. Under act of July 14, 1832, chap. 230, it is not necessary that partners shall be insolvent debtors, within the meaning of the priority acts, in order to be entitled to relief. It is sufficient that they are unable to pay their debts to the United States. *Opinion of Feb.* 20, 1833, 2 Op. 552.

8. Neither the act of March 2, 1831, chap. 62, nor the said act of 1832 deprives debtors of their right to relief where they fail to place the United States upon equal footing with the rest of their creditors. All persons who are unable to pay their debts to the United States may be released, provided they are not of that class who are excepted from the benefit of those laws. *Ibid.*

9. The Secretary of the Treasury may, in his discretion, refuse a discharge on account of circumstances taken in connection with the application of the property of debtors to their private creditors. He may have evidence that renders them unfit subjects for relief. But the application of all the debtor's effects to the payment of private creditors is not of itself a legal bar to their release. *Ibid.*

10. Where imprisoned debtors are discharged on payment of costs, it is to be inferred that the condition embraced only the cost of suit in the cases in which they were imprisoned, and not the expenses of the examination made under the act of June 6, 1798, chap. 49. The expenses of the examination may be paid from the judiciary fund. *Opinion of Jan.* 22, 1841, 3 Op. 614.

11. The act of March 3, 1797, chap. 20, which provides that when the estate of a deceased debtor to the United States is insufficient to pay all his debts, the debt due to the Government shall be first satisfied, does not create any lien upon the debtor's property but merely points out a mode of distribution. *Opinion of May* 16, 1857, 9 Op. 28.

12. The priority of the United States therefore cannot reach back over any valid lien, whether it be general or specific. *Ibid.*

13. Where a collector of customs executed a mortgage upon his real estate to indemnify his sureties, and then died insolvent, and in debt to the United States, the mortgage to the sureties is valid and effectual against the United States. *Ibid.*

INSURRECTION.

See DOMESTIC VIOLENCE IN STATES.

INTEREST.

1. Interest on certificates founded upon indents of interest issued under act of August 4, 1790, chap. 34, is not allowable, and the courts would embarrass a system of finance by a determination in favor of interest for the year 1791. *Opinion of Aug.* 21, 1791, 1 Op. 17.

2. Interest is in the nature of damages for withholding money which the party ought to pay, and would not or could not; but where the holder of a claim omits for a long time to make application for payment, and the act of Congress directing payment is silent as to interest, he does not come within the reason of the rule. *Opinion of April* 3, 1819, 1 Op. 268.

3. The Georgia claims, settled by commissioners under the treaty of the 8th January, 1821, with the Creek Nation of Indians, should be liquidated on the same principle that they would have been against the Indians, and interest thereon should not be allowed. *Opinion of June* 11, 1822, 1 Op. 550.

4. Interest is not a thing of course; it is in no case a part of the debt, nor is it a necessary consequence of the debt. By the polity of many nations it is forbidden, and by those whose laws allow it in cases between individuals it is not made a right in all cases. In cases of unliquidated damages it is in general disallowed, and the Georgia claims, being of that character, are excluded by the general rule. *Opinion of July* 20, 1822, 1 Op. 554.

5. The Secretary of the Treasury has no authority to increase an allowance made by the Secretary of the Navy to certain citizens of Baltimore under the act of 26th April, 1822, chap. 36, and it would be an increase of it to give interest on the amount, or to assume it as a debt due at a day antecedent to the allowance. The allowance becomes a debt due from the United States only from the time it is made. *Opinion of April* 7, 1823, 1 Op. 605.

6. The United States were bound to Virginia, by the relation which subsists between the General and State Governments, to provide the means of carrying on the war, and failing to make such provision, and Virginia herself having made it from her own resources, the same became a debt against the United States, which they were bound to reimburse. The rule concerning interest has been, that where a State supplied the moneys for expenditure from her own treasury no interest has been allowed; but where a State, from the condition of her own finances, was obliged to borrow the money, and to thus incur a debt on which she herself became obligated to pay interest, interest has been allowed to her for indemnity. *Opinion of June* 6, 1825, 1 Op. 723.

7. In the case of Virginia there is a special statute (the act of March 3, 1825, chap. 106) authorizing the payment of interest, and prescribing the rules for computing it. Interest may be computed upon loans or money borrowed and actually expended for the use and benefit of the United States during the late war with Great Britain, but shall not be computed on any sum which Virginia has not expended for the use and benefit of the United States, as evidenced by the amount refunded, nor upon any sums refunded or paid her subsequent to such refunding or payment. *Ibid.*

8. It was the intention of Congress to reimburse to the State of Virginia all the interest which she had actually paid on account of loans made necessary by her having taken the place of the United States in meeting the expenses of the war in that State, and although the money so borrowed may have been placed in the State treasury and thereby blended with the State's revenue, yet, if from the revenues thus blended a sum equal in amount to the sum borrowed was expended for the use of the United States, the State is nevertheless entitled to interest without proof that the very dollars borrowed were expended. *Ibid.*

9. In like manner she is entitled to interest on loans made necessary by the exhaustion of the State treasury in taking up loans for the use of the United States. *Ibid.*

10. The idemnification awarded by the Emperor of Russia to be paid by Great Britain for having violated the treaty of peace in taking and carrying away American slaves and other property involves not merely the return of the value of the specific property, but a compensation also for the subsequent and wrongful detention of it in the nature of damages; and since this will be a work of great labor and time, interest, according to the usage of nations, may be taken as a necessary part of the indemnification awarded. *Opinion of May* 17, 1826, 2 Op. 28.

11. The people of Georgia are not entitled to interest, under the treaty of Indian Spring,

on their claims against the Creek Nation, the commissioner having made his award on such equitable principles as gave a just indemnification without the superaddition of interest. *Opinion of July* 28, 1828, 2 Op. 110.

12. The trustees of M. and S. who, having been unfortunate in the business of merchants at Norfolk, made an assignment in 1819 whilst owing the United States about $19,000 (which sum was afterwards reduced by them and their trustees to $10,240.65), cannot properly claim that the detention of certain specie brought in by the Macedonian frigate in 1812 amounted to a payment upon the debt of the United States so as to extinguish interest. *Opinion of July* 1, 1829, 2 Op. 214.

13. No interest is allowable by the accounting officers on the appropriation of five years' full pay in favor of the memorialists made by act of 29th May, 1830, chap. 159, being the commutation for half-pay for life due to their father in his life-time. *Opinion of Oct.* 2, 1830, 2 Op. 390.

14. There is no law forbidding accounting officers from allowing interest to claimants, if it shall appear that interest is justly due them. *Opinion of Sept.* 10, 1831, 2 Op. 463.

15. Interest on a demand against the United States is properly allowable where the claimant, in a suit against him, obtained a judicial decision in his favor, and the act of Congress providing for its payment proceeded upon the knowledge that interest had been allowed by the court. *Opinion of Nov.* 23, 1837, 2 Op. 294.

16. Aside from the reports in the case, the law which requires the accounting officers to recognize the judicial decision as settling the true construction of the contract and the relative rights of the parties under the same, also requires the payment of interest. *Ibid.*

17. Interest on Treasury notes issued under the act of the 12th of October, 1837, chap. 2, and placed in the hands of disbursing officers to meet public liabilities, does not begin to accrue until they are actually issued by such officers. *Opinion of Dec.* 2, 1837, 3 Op. 296.

18. Where the Treasurer of the United States issued a draft upon a deposit bank to a Navy agent, who sold it in order to raise money for necessary expenditures, and the draft was afterwards presented and dishonored: *Held* that it was proper for the Treasury Department to pay the interest and cost the dishonor out of the original s under which it was drawn. *Opi* 23, 1838, 3 Op. 320.

19. Interest cannot be legally c the stocks issued by the State c and redeemable at the pleasure which are held in trust for the from the time when the funds w by the State for the redemption c pal. *Opinion of Feb.* 8, 1840, 3 C

20. A legislative provision ou garded as notice by a State to t its stock sufficient to bar any l subsequent interest. *Ibid.*

21. Interest on claims for loss by troops in the service of the U is not allowable, unless the same pressly provided for in the act under which the claim is authoriz *Opinion of June* 17, 1841, 3 Op. 6

22. A claimant is not entitled against the Government on acc omission of the executive officers claim when presented. *Opinion* 1842, 4 Op. 14.

23. In the case presented by th William Otis, some time collec stable, under an act of Congress accounting officers to settle with s satisfy such amount of principal as might be found due to him, tl of interest is proper. *Opinion of* 4 Op. 79.

24. If the account has once b by the Comptroller without allow under the erroneous idea that int allowable, the settlement may b the account be correctly stated The case is distinguishable from counts. *Ibid.*

25. Under the settled practice o ment, interest will not be allow admitted in the settlement of a mistaken view of the law. *Opi* 20, 1842, 4 Op. 136.

26. The Secretary of the Tre authorized to allow interest on th sented under the treaty with Sp acts of March 3, 1823, chap. 35, 1834, chap. 87, it not having be of the Government to do so, nor to the claimants, under the ci

require it. *Opinion of Dec.* 9, 1843, 4 Op. 286.

27. In the case of James Semple, chargé d'affaires to New Grenada, who had drawn a draft for his salary, which was dishonored at the banking house in London, and the holder subjected to delay thereby and the drawer to the payment of interest: *Held* that the Government is liable for such interest, and that Mr. Semple is liable to account to the Government for interest on the amount over and above his salary realized by him on the negotiation of such draft from the time he was notified of the mistake. *Opinion of Dec.* 30, 1843, 4 Op. 299.

28. The Executive Department is not authorized to allow interest upon a draft drawn by the American chargé d'affaires to Peru upon the Treasury for his outfit before the same had been appropriated by Congress, because of the delay occurring in respect to its payment. *Opinion of Sept.* 8, 1848, 5 Op. 28.

29. The interest on the claim of the representatives of George Fisher, deceased, for property taken or destroyed by the troops of the United States, should be computed from the time of the taking or destruction. *Opinion of Feb.* 16, 1849, 5 Op. 71.

30. In general, the Government, which is always to be presumed ready and willing to discharge its obligations, pays no interest; yet, from considerations of state policy, it has sometimes allowed it, as in the case of claims under the act of April 18, 1814, chap. 68. *Opinion of May* 30, 1849, 5 Op. 105.

31. In the case of the claim of the heirs of Thomas Ewel for commutation for military services, interest as well as the principal may be allowed. *Opinion of July* 20, 1849, 5 Op. 138.

32. George Galphin, in his lifetime and prior to 1773, was a trader with the Creeks and Cherokees in the then colony of Georgia, and at the date of the treaty concluded in that year between said Indians and the Government of Great Britain, ceding a large district of country to the latter, in trust, for the payment of their debts to traders from the proceeds, &c., a creditor of said Indians to a large amount. After the appointment of commissioners by Great Britain to liquidate such debts, he obtained from them in 1775 a proper certificate of liquidation of his demand, but, in consequence of his subsequent disloyalty to that Government in the revolution which immediately followed, was never paid according to the stipulations of the said treaty, but retained such certificate unsatisfied until his death. His claim was then preferred against Georgia, and subsequently against the United States, to whom a large tract of said land had been ceded, until 1848, when Congress ordered it to be paid; and, pursuant to its order, the principal was paid by the Secretary of the Treasury: *Held* that the lands ceded by the treaty of 1773 were charged with this debt; that the same was subsequently assumed by the United States; that the claim is analogous to others upon which interest has been allowed, and that the claimant is entitled to interest from the date of the certificate of said commissioners liquidating the demand. *Opinion of Feb.* 2, 1850, 5 Op. p. 228.

33. Interest is not chargeable against the Bank of the United States, nor the trustees thereof, upon the demands in question, from and after the 11th of July, 1843, when the sheriff sold the assets of said bank in satisfaction of the demands of the United States, until the month of January, 1846, when the funds were invested. *Opinion of Mar.* 15, 1851, 5 Op. 304.

34. The moneys advanced to the contractors for transporting the mails from New York to Chagres were so advanced as a favor and bounty to the enterprise, without provision for interest or repayment until the passage of the act of March 3, 1851, chap. 34; and under that act interest, at the rate of 6 per cent. per annum, is to be computed and charged, but only from the date of its passage. *Opinion of April* 22, 1851, 5 Op. 356.

35. Interest on claims for transportation, under the act of June 2, 1848, chap. 60, should be allowed up to the time of payment at the Treasury, provided the claimant presents his application without unnecessary delay. The act did not create debts bearing interest redeemable only at the pleasure of the creditor. *Opinion of Oct.* 8, 1851, 5 Op. 399.

36. A draft for $20,000 was legally drawn by a purser in California on the Navy Department, and indorsed to the order of B., who presented it for payment on the 5th of April, 1850, but it was not paid till the 9th of August following: *Held* that B., having accepted payment and surrendered the bill, has no claim for interest

and 20 per cent. damages. *Opinion of Nov.* 14, 1851, 5 Op. 444.

37. Such bill is to be considered as a foreign bill of exchange, and a protest was necessary before even the drawer or indorser could be holden for damages. *Ibid.*

38. Interest should be allowed the State of Florida upon all sums expended and obligations contracted for supplies and services of local troops called into service in 1849, by and under the authorities of said State, where it shall appear that said State has paid, lost, or incurred interest on that account. *Opinion of Nov.* 17, 1851, 5 Op. 455.

39. As a general rule, the United States do not pay interest on any debts of the Government. *Opinion of Sept.* 20, 1855, 7 Op. 523.

40. The only exceptions are where the Government stipulates to pay interest, as in public loans, and where interest is given by act of Congress expressly, either by the name of interest or by that of damages. *Ibid.*

41. Acts of Congress authorizing the settlement of claims according to "equity," or "equity and justice," do not give interest; for, as between private individuals, there is no material difference in this respect between equity and law, and that expression does not change the result as regards the Government. *Ibid.*

42. Where a mail steamship company were bound by law, out of sums of money coming due to it from the Government for mail service, to refund, with interest, certain advances made to the company, and by reason of the failure of Congress to make appropriations for the service the Government was in default to the company: *Held* that the latter was not bound to pay interest during the period of such default. *Opinion of Sept.* 27, 1855, 7 Op. 535.

43. As a general rule, the Government never pays interest upon a debt except under a special contract or a special law expressly providing for the payment of interest. *Opinion of Aug.* 11, 1857, 9 Op. 57.

44. An act of Congress authorizing the payment of interest on a debt, without fixing any time when it shall cease to be paid, authorizes interest to be computed as long as any part of the principal remains unsatisfied. *Ibid.*

45. Interest is never given by construction under an act of Congress authorizing the payment of money out of the Treasury to a citizen. *Opinion of July* 20, 1860, 9 Op. 450.

INTERIOR DEPARTMENT.

See EXECUTIVE DEPARTMENTS; SECRETARY OF THE INTERIOR.

INTERNAL REVENUE.

See also COMMISSIONER OF INTERNAL REVENUE.

I. *Generally.*
II. *Collection Districts.*
III. *States and Municipal Corporations.*
IV. *Banks and Bankers.*
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VIII. *Stamps.*
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X. *Forfeiture.—Compromise.*
XI. *Informer's Share.*
XII. *Property in Custody, &c., of Court.*

I. Generally.

1. The regulations of the Commissioner of Internal Revenue established in October, 18[illegible] under the proviso to the sixty-ninth section of the act of July 1, 1862, chap. 119, are not warranted by the statute. *Opinion of April* [illegible] 1863, 10 Op. 476.

2. The Commissioner had authority under the law to exempt articles from taxation in the hands of the manufacturers which were made and sold to the Government under contracts date prior to July 1, 1862. *Ibid.*

3. Taxes assessed and paid upon articles manufactured and sold to the Government under such contracts cannot lawfully be added by the officers of the Government to the contract price of such articles. *Ibid.*

4. The fines imposed upon indictments and convictions under the ninth section of the internal-revenue act of July 1, 1862, chap. [illegible] inure wholly to the United States, and the collectors have no right or interest therein. *Opinion of July* 30, 1864, 11 Op. 62.

5. The offense created by the said ninth section can be tried and punished only by indictment, and not otherwise. *Ibid.*

6. Under the fourteenth section of the internal-revenue act of June 30, 1864, chap. 173, the assessor has power, in all cases of false or fraudulent lists or valuations, to add the penal duty of 100 per cent. before the lists have been returned to the collector; but such power terminates on the transmission of such lists to the collector. *Opinion of July* 10, 1865, 11 Op. 280.

7. The ninety-eighth section of the internal-revenue act of June 30, 1864, chap. 173, imposes tax on sales at auction of Government property. *Opinion of Sept.* 14, 1865, 11 Op. 354.

8. Cotton belonging to a Choctaw Indian, produced by him in the territory of his nation and found beyond its limits, is not subject to the internal-revenue tax. *Opinion of March* 30, 1867, 12 Op. 132.

9. Distillers of brandy from apples, peaches, and grapes, exclusively, may be exempted, in the discretion of the Commissioner of Internal Revenue and the Secretary of the Interior, from the provision of the fifty-ninth section of the act of July 20, 1868, chap. 186, levying a special tax of $4 a barrel upon distilled spirits. *Opinion of Oct.* 10, 1868, 12 Op. 514.

10. The general purpose of the internal-revenue law of July 20, 1868, chap. 186, so far as relates to distilled spirits, is to lay a tax upon the product of distillation known as proof-spirits. *Opinion of Nov.* 14, 1868, 12 Op. 523.

11. The act has made decisive and peremptory distinctions between the production of proof-spirits and the rectification or purification or the production of other forms of alcoholic compounds. *Ibid.*

12. Any contrivance which should accomplish the production of alcohol or rectified spirits in a manner to subject such products to a single tax, as upon proof-spirits, would be presumptively in contravention of the law. *Ibid.*

13. A true construction of the act of Congress does not require any distinction to be drawn between an arrangement of *stills* by which the process of "doubling" is carried on by passing the low wines a *second* time through the *same* still, and passing these a second time through distillation in *another* still. *Ibid.*

14. An arrangement by which a *tank* is interposed as a receptacle for the product of distillation, so far as the same has not reached the condition of proof-spirits, but still continues to be low wines, with a view to carry it back for further distillation, is not a violation of the act. *Ibid.*

15. The provisions of the ninety-seventh section of the internal-revenue act of June 30, 1864, chap. 173, relative to the discharge of duties upon articles delivered to the United States under contract, where such duties were imposed subsequent to the date of the contract, are limited to additional duties on the articles contracted to be delivered, and do not include additional duties imposed upon articles used in the manufacture of the articles so contracted to be delivered. *Opinion of Sept.* 6, 1869, 13 Op. 138.

16. Accordingly a person who contracted before the passage of the act of June 30, 1864, to furnish army clothing to the Government after its passage, is discharged from payment of the 2 per cent. additional tax imposed by that act upon clothing, but not from payment of any additional taxes imposed upon the yarn or cloth used in its manufacture. *Ibid.*

17. The proviso to the ninety-seventh section of the internal-revenue act of June 30, 1864, chap. 173, is applicable only to such persons as, by reason of manufacturing the articles taxed either by themselves or their agents, would have been liable to pay the additional taxes upon the articles unless exempted therefrom by the provisions of that section. *Opinion of Sept.* 13, 1869, 13 Op. 143.

18. Detectives whom the Commissioner of Internal Revenue is authorized to employ by the fiftieth section of the act of July 20, 1868, chap. 186, are not internal-revenue officers. *Opinion of May* 13, 1870, 13 Op. 229.

19. The proprietors of coasting vessels and vessels running upon the rivers and inland lakes, engaged in the carrying or delivery of money, valuable papers, or any articles for pay, whose gross receipts therefrom exceed $1,000 per annum, are liable to the special tax imposed on express carriers and agents by paragraph 50 of section 79 of the act of June 30, 1864, chap. 173, as amended by the act of July 13, 1866, chap. 184. *Opinion of Nov.* 8, 1870, 13 Op. 572.

20. The Commissioner of Internal Revenue has no authority to direct the restamping of

distilled spirits and fermented liquors where the stamp previously affixed has become detached and destroyed without the fault of the distiller. *Opinion of May* 8, 1871, 13 Op. 574.

21. The provisions of the sixth section of the act of March 3, 1865, chap. 78, imposing on national banking associations, State banks, or State banking associations a tax of 10 per cent. upon the amount of notes of any person, State bank, or State banking association, used for circulation and paid out by them, apply as well to the notes of a State bank or banking association *which are by itself paid out*, as to any others falling within the above description. *Opinion of Aug.* 14, 1872, 14 Op. 98.

22. The exemption from taxation of 5 per cent. of the outstanding circulation of any bank, association, corporation, company, or person, provided by the fourteenth section of the said act of March 3, 1865, as amended by section 9 [*bis*] of the act of July 13, 1866, chap. 184, does not relate to the *tax upon notes paid out* which the sixth section of the act of 1865 imposes, but exclusively to the *tax upon circulation* imposed by the one hundred and tenth section of the act of June 30, 1864, chap. 173, as amended by section 9 of the said act of 1866; and it relieves, to the extent mentioned, from the latter tax only. *Ibid.*

23. Effect of the amendment of the seventy-fourth section of the act of July 20, 1868, chap. 186, made by the thirty-first section of the act of June 6, 1872, chap. 315, in regard to the internal-revenue tax on tobacco, considered. *Opinion of Aug.* 27, 1872, 14 Op. 110.

24. All tobacco stored in bonded warehouses, and withdrawn for sale or consumption before the 1st of July, 1872, is, notwithstanding that amendment, subject to taxes imposed by the act of July 20, 1868. *Ibid.*

25. But all tobacco in bonded warehouses on the 1st of July, 1872, and withdrawn after that date for the same purposes, is by virtue of that amendment subject to the tax imposed by the act of June 6, 1872. *Ibid.*

26. The tax imposed by the internal-revenue act of June 30, 1864, chap. 173, as amended by the act of July 13, 1866, chap. 184, on the articles enumerated in Schedule C, is payable as well upon the removal of such articles for consumption without sale as upon the removal thereof for sale. *Opinion of Oct.* 8, 1874, 14 Op. 459.

27. The *proviso* in section 31 of June 6, 1872, chap. 315, authori of wood, metal, paper, &c., sep combination, for packing tobacc cigars, under regulations of the C of Internal Revenue, does not b modify or in any way affect the of the act of July 20, 1868, chap. 89, that certain numbers and nam into cigar-boxes with a brandin removing them from the manufa *ion of Oct.* 11, 1875, 15 Op. 517.

28. The terms of section 325 namely, "every person in any n ested in the use of any still, dist tilling apparatus shall be jointly liable for the taxes imposed by la tilled spirits produced therefro stockholders of private corporati in distilling for gain. *Opinion* 1877, 15 Op. 559.

29. Where certain savings ba capital stock, received daily depo ers than their regular depositors, ment that no interest should be allc but that they might be checked previous notice, and that the che paid by drafts on Boston when sc meet which drafts a fund was ke in a Boston bank, upon which allowed the savings banks at the cent. per annum: *Held* that these s are not entitled to exemption fron said deposits under section 9 of th 13, 1866, chap. 184 (nor under sect Stat.). *Opinion of March* 2, 1878,

30. Upon consideration of the f tions of the Revised Statutes, nan 3236, 3244, 3362, 3363, 3387, 339 *Held* that the manufacture of c bacco and the sale of cigars and n tobacco at retail cannot be lawful at the same time in the same pl manufacturer of these articles is ized to sell from broken packa retail dealer's license, at the pl facture. *Opinion of July* 17, 187

31. The obligations issued by phia and Reading Railroad Com "wages certificates," in sums c payable in money to the bearer receivable in payment of debts pany (a copy of which instrume

the opinion) are "notes used for circulation," within the meaning of sections 19 and 21 of the act of February 8, 1875, chap. 36, and subject to taxation thereunder. *Opinion of May 22, 1879*, 16 Op. 342.

32. *Semble* that certain obligations issued by Knapp, Stout & Co., of similar character, payable in merchandise, are within the mischief intended to be remedied by that act; wherefore it is *advised* that the tax be exacted upon them, as it has heretofore been, under the sections aforesaid. *Ibid.*

33. The "tax on deficiency" in the quantity of distilled spirits exported, when compared with the quantity withdrawn for exportation (see acts of June 9, 1874, chap. 259, and March 1, 1879, chap. 125), may be collected by distraint upon the property of the withdrawer of the spirits, as well as by suit upon the transportation bond. *Opinion of Oct. 2, 1879*, 16 Op. 634.

34. Such tax is secured by a lien, under the general provision contained in section 3186 Rev. Stat., upon all the property of the person liable therefor. The special provisions found in section 3251 Rev. Stat. do not forbid the application of the general provision of section 3186 to all cases where there is nothing in such special provisions to contradict. *Ibid.*

35. The receipt of the ascertainment of deficiency by the collector of internal revenue from the collector of customs is, in effect, his receipt of an assessment list of the tax, within the meaning of section 3186, as amended by the act of March 1, 1879, chap. 125. *Ibid.*

II. Collection Districts.

36. The President, under the authority of the internal-revenue act of July 1, 1862, chap. 119, having divided the United States into convenient collection districts, the arrangement which he made became a part of the system established by the statute, and can be changed only by the law-making power. *Opinion of March 19, 1862*, 10 Op. 469.

37. The existing internal-revenue laws do not authorize the consolidation of the cotton-growing States into a single collection district for the purpose of collecting the cotton tax. *Opinion of Sept. 29, 1866*, 12 Op. 55.

38. The provision in the second section of the act of July 1, 1862, chap. 119, readopted by the seventh section of the act of June 30, 1864, chap. 173, limiting the number of internal-revenue collection districts in any State, is unrepealed by the provision in the act of July 12, 1870, chap. 251, authorizing the President, at his discretion, to "divide the States and Territories respectively into convenient collection districts, or alter the same," &c. The restriction as to the number of such districts imposed by the former provision is still in force. *Opinion of April 9, 1873*, 14 Op. 215.

III. States and Municipal Corporations.

39. The certificates or receipts issued by the State of Alabama, under authority of the act of its legislature of February 19, 1867, are not subject to the tax of 10 per cent. imposed by the act of Congress of March 26, 1867, chap. 8. *Opinion of June 28, 1867*, 12 Op. 176.

40. Railroads owned exclusively by a State and operated by its own agents do not fall within the provisions of the internal-revenue act of June 30, 1864, chap. 173. *Opinion of Oct. 14, 1867*, 12 Op. 277.

41. Articles manufactured by convict labor in the penitentiaries of a State, for the use or on account of the State, are not subject to taxation under the internal-revenue laws. *Ibid.*

42. The Detroit, Mich., house of correction is within the principles of the opinion of Attorney-General Stanbery of Oct 14, 1867 (12 Op. 277), which declares that articles manufactured by convict labor in the penitentiaries of a State, for the use of the State, are exempt from taxation under the internal-revenue laws. *Opinion of March 30, 1868*, 12 Op. 376.

43. The city of Baltimore, by authority of the State legislature, made a loan to the Baltimore and Ohio Railroad Company, the latter agreeing to pay to the city interest thereon quarter-yearly, at the rate of 6 per cent. per annum, and giving to the city a mortgage upon all its property to secure the performance of the agreement: *Held* that the company is not liable, under the provisions of the internal-revenue act of June 30, 1864, chap. 173, as amended by the acts of July 13, 1866, chap. 184, and March 2, 1867, chap. 169, to pay a tax upon the interest payable by it to the city on the said loan. (See NOTE, 13 Op. 76.) *Opinion of June 2, 1869*, 13 Op. 67.

44. The opinions of Mr. Stanbery and Mr.

Browning, touching kindred subjects which were submitted to and considered by them (see 12 Opins. 176, 277, 376), reviewed. *Ibid.*

45. The provisions of the internal-revenue laws relating to income taxation do not apply to municipal corporations, either directly, by imposing a duty upon their receipts of revenue, or indirectly, by imposing a duty upon the sources whence their revenue is derived. *Ibid.*

46. Internal-revenue tax paid on dividends accruing to the State of Massachusetts as a stockholder in the Boston and Albany Railroad, from January, 1863, to July, 1869, inclusive: *Held* (upon the authority of opinions of former Attorneys-General cited) to have been erroneously collected. *Opinion of June* 3, 1871, 13 Op. 439.

IV. Banks and Bankers.

47. Bankers doing business as brokers are liable to pay, under the ninety-ninth section of the act of June 30, 1864, chap. 173, duties upon all their sales, whether for the benefit of themselves or of others. *Opinion of May* 4, 1866, 11 Op. 482.

48. The terms "capital" and "capital employed," as used in paragraph *second* of section 3408 Rev. Stat., include such portion of the capital of any bank, association, company, corporation, or person mentioned therein as is invested in a banking house. *Opinion of April* 7, 1877, 15 Op. 218.

49. Under that provision every banking association, company, or corporation is taxable for the fixed amount of its capital, and every private banker for the entire capital employed by him in the banking business, *less only* the average amount invested by them respectively in United States bonds. *Ibid.*

50. The Eagle and Phœnix Manufacturing Company, a Georgia corporation, with a large capital invested in mills, machinery, &c., by authority of an act of the Georgia legislature passed in 1873 established a savings bank in connection with its manufacturing business, pledging the entire capital stock and property of the company for the payment of depositors and the holders of certificates of deposits issued thereby. By the same act the company was authorized to issue certificates of deposit "to an amount equal to the amount actually deposited, in sums of five, two, and one dollars, which may be payable to the holder of the same, and may be circulated by delivery as currency," which were issued and employed as currency in the business of the company: *Held* that the company is subject to the tax imposed by the second paragraph of section 3408 Rev. Stat., of "one twenty-fourth of one per centum each month" upon its whole capital stock. *Opinion of* Oct. 3, 1877, 15 Op. 37[illegible].

51. The duty imposed on every national banking association by section 5214 Rev. Stat. of "one-quarter of one per centum each half year on the average amount of its capital stock beyond the amount invested in United States bonds," is a tax upon the *franchise* of the bank, not a tax upon its capital stock. Hence, in determining the quantum of such tax payable by the bank, no deduction can be made from its capital stock of the amount thereof which is invested in any non-taxable property that does not fall under the description of "United States bonds" within the meaning of the statute. *Opinion of Oct.* 16, 1878, [illegible] Op. 174.

52. Although the bonds known as the "District of Columbia 3.65 bonds" are obligations of the United States, for the payment of which the faith of the Government is solemnly pledged, yet those bonds are not "United States bonds" within the meaning of sections 5214 and 5215 Rev. Stat.: *Held*, accordingly, that a national banking association, in making returns of the average amount of its capital stock, &c., under section 5215 Rev. Stat., should not be allowed to deduct the amount of capital invested in "District of Columbia 3.65 bonds," although these bonds are, by section 7 of the act of June 20, 1874, chap. 3[illegible], "exempt from taxation by Federal, State, or municipal authority." *Ibid.*

53. In determining "the average amount invested in United States bonds," under the provisions of section 3408 Rev. Stat., imposing a tax upon the capital employed in the business of banking, and "the amount invested in United States bonds," under the provisions of section 5214 Rev. Stat., imposing a semi-annual duty on national banking associations, the amount thus "invested" is, in either case to be ascertained by taking the price actually paid for the bonds. But with in the price accrued interest should not be com-

l, that being a mere temporary invest which is replaced as soon as the inter- comes due and payable. *Opinion of Oct.* 78, 16 Op. 187.

V. Salaries.

A tax upon the salary of an officer, to ducted from what would otherwise be le as such salary, is a diminution of his nsation; and, in the case of the Presi- nd the judges of the Supreme and in- courts of the United States, such dimi- would fall within the prohibition of the tution, if the act levying the tax was d during the official term of the Presi- r of the judge affected thereby. *Opinion* 23, 1869, 13 Op. 161.

When Congress imposes a tax upon the sal- fall civil officers, the language, although l, must necessarily be construed to mean il officers except those whom Congress has e constitutional power to subject to such *Ibid.*

Accordingly, the just construction of ternal-revenue laws, taxing "all salaries ers," &c., does not require or permit duction of an income-tax from the sala- the President or the justices of the Su- Court. *Ibid.*

VI Export Bond.

Money recovered in a suit on an expor given under the internal-revenue laws s exclusively to the United States, the s money recovered in a suit on any other ct with the Government; and neither e officers nor informers can have any therein. *Opinion of July* 6, 1869, 13 Op.

An export bond covering certain dis- spirits was subsequently canceled upon oduction of a landing certificate; after it turned out, on examination at the of landing, that the barrels which con- the spirits were all, or nearly all, filled vater, in fraud of the revenue: *Advised,* claim which has since been preferred t the obligors in the bond, with respect ir liability in the matter (no suit or pro- g in court having been commenced), be compromised by the Commissioner of al Revenue with the approval of the ary of the Treasury. *Ibid.*

VII. Distiller's Bond.—Surety on.

59. The stockholders of a corporation en- gaged in the business of distilling cannot properly be accepted as sureties upon the bond required of the corporation by section 3293 Rev. Stat., even if their individual liability for the debts of the corporation is, by the terms of the charter, limited to the amount of their stock. Such stockholders being already jointly and severally liable, under the provisions of section 3251 Rev. Stat., for the taxes imposed upon the spirits manufactured by the corpora- tion, no additional security for the payment thereof would be gained by their suretyship. *Opinion of May* 13, 1878, 16 Op. 10.

60. The liability imposed upon the stock- holders by the internal-revenue law is a lia- bility distinct from that which they are under as such to the public with whom the corpora- tion deals; it is a liability imposed by reason of the business in which the corporation whereof they are stockholders is engaged. *Ibid.*

VIII. Stamps.

61. Notwithstanding the decision of the State courts of Tennessee that section 170 of the act of June 30, 1864, chap. 173, imposing stamp duty on writs and other legal instru- ments, is unconstitutional, the proper officers of the United States should be instructed to institute proceedings against all persons in that State guilty of a violation of the statute. *Opinion of Sept.* 1, 1866, 12 Op. 23.

62. In placing the portraits of living persons upon *internal-revenue stamps* there is really no infraction of the provisions of section 3576 of the Revised Statutes; nor are such ornaments forbidden to be placed on such stamps by any other legislative enactment; yet their exclu- sion therefrom would seem to be in consonance with the spirit of said section. *Opinion of Feb.* 15, 1875, 14 Op. 528.

63. Sections 3445 and 3446 Rev. Stat. give the Secretary of the Treasury and the Com- missioner of Internal Revenue power to re- quire and enforce the use of the so-called Hun- ter stamp upon cigars. Regulations promul- gated under and in conformity with those sec- tions have the force of law; and a failure to comply therewith is punishable under the gen- eral clause of section 3456 Rev. Stat. *Opinion of Feb.* 2, 1877, 15 Op. 191.

64. A dealer in cigars would not be liable to any penalty under existing laws (see sections 3397 and 3406 Rev. Stat.) for refusal or neglect to detach the coupons from the stamp known as the Hamilton-Brooks stamp, *at the time* contemplated by that device, should such stamp be adopted in pursuance of the provisions of section 3446 Rev. Stat., as amended by section 18 of the act of March 1, 1879, chap. 125. He would under existing laws incur liability for not destroying the stamp when the box is emptied, but not for refusal or neglect to do so previously thereto. *Opinion of Jan.* 24, 1880, 16 Op. 443.

IX. Refunding.

65. The Commissioner of Internal Revenue is authorized, not obliged, to refund taxes erroneously collected; but he should refund in all such cases, except where the fault of the taxpayer, or his waiver of his rights, or his long acquiescence, or other sufficient circumstances discredit the claim. *Opinion of June* 3, 1871, 13 Op. 439.

66. An application filed with the Commissioner of Internal Revenue for the refunding of taxes alleged to have been erroneously or illegally assessed and collected, though informal or defective, may nevertheless be regarded as a "claim" within the meaning of section 44 of the act of June 6, 1872, chap. 315, so far at least as to be the foundation for an *amendment*. *Opinion of July* 15, 1873, 14 Op. 615.

67. Where the application is delivered to a collector or other local internal-revenue officer, it is not a presentation of the claim to the Commissioner such as is contemplated in the first *proviso* of that section. *Ibid.*

68. Under the internal-revenue act of June 30, 1864, chap. 173, section 120, money earned and received by a bank during any one of the four years beginning with April 1, 1864, and added to its surplus or contingent funds, either actually (*i. e.*, at periods having intervals of less than six months) or by construction of law (*i. e.*, once in six months), remained liable to the 5-per-centum tax imposed by said section, notwithstanding that subsequently an equivalent amount of money was stolen from the bank by one of its officers. But where the money earned and received was stolen and lost, either before having been actually added to the surplus or before the expiration of the six months, the case is one entitled to relief. *Opinion of March* 13, 1874, 14 Op. 643.

69. *Semble*, that where a distiller, in consequence of the destruction of a revenue stamp without fault on his part, is forced to affix a new one, the Commissioner, upon proof of these facts, may direct the price of the second stamp, or rather the tax thus a second time exacted, to be refunded, under the power given him to refund taxes illegally assessed. *Opinion of May* 8, 1874, 13 Op. 574.

70. Stamps or stamp-duties come under the provisions of section 3228 of the Revised Statutes imposing a limitation on claims for the refunding of internal taxes, and hence claims for a refund of money paid for stamps must be presented to the Commissioner of Internal Revenue within two years from the time they have accrued, otherwise they will be barred. *Opinion of Jan.* 7, 1875, 14 Op. 513.

71. Where a trust-deed was executed to secure certain bonds and duly stamped and delivered, but the bonds not having been issued as contemplated, the deed was subsequently canceled and in lieu thereof a new trust-deed and bonds of another description were thereupon executed and delivered: *Held* that the case of the first-mentioned deed is within the provisions of section 3426 of the Revised Statutes, and presents a case for allowance by the Commissioner, unless barred by section 3228. *Ibid.*

72. The amount of taxes illegally collected from the Illinois Central Railroad Company from 1863 to 1866, as income tax upon dividends on stock held by non-resident aliens, should be repaid to that company, after deducting so much therefrom as has already been paid over to the stockholders lawfully entitled thereto. *Opinion of Dec.* 29, 1875, 15 Op. 67.

73. The limitation in section 3228 Rev. Stat., relative to claims for the refunding of internal-revenue taxes, has no application to claims for allowances for stamps under section 3426 Rev. Stat. Opinion of January 7, 1875, in 14 Op. 513, overruled. *Opinion of Jan.* 16, 1878, 15 Op. 427.

74. That limitation is intended to apply to the claims described in section 3220 Rev. Stat. only. *Ibid.*

75. Documentary stamps presented under section 3426 Rev. Stat. above the denomination of two cents, which have been spoiled or

improperly or unnecessarily used, or are affixed to blank instruments, &c., and which are therefore not in the same condition as when issued, cannot be redeemed by the Commissioner of Internal Revenue *unless* the person presenting them satisfactorily traces the history thereof, as provided by the *proviso* in the act of July 12, 1876, chap. 181. *Ibid.*

76. Where internal-revenue taxes were paid by a railroad company on dividends of its stock owned by a State, and no application has been made by the company within the time limited by statute for a refund: *Held* that the Commissioner of Internal Revenue has no authority to allow the amount so paid to be applied by way of set-off in discharge of a liability of the company for taxes arising upon a subsequent assessment. *Opinion of Jan.* 14, 1879, 16 Op. 249.

77. In the winter of 1866–'67, R. purchased a large quantity (1,777 barrels) of distilled spirits in bond, which were not withdrawn from warehouse until May, 1869. Upon their withdrawal therefrom the internal-revenue tax was exacted on the whole quantity originally deposited in the warehouse, without allowance for leakage (which amounted to about 13,000 gallons) whilst there. R. subsequently made application to the Commissioner of Internal Revenue, under section 3220 Rev. Stat., for repayment of so much of the tax which was exacted as covered the amount of spirits lost by warehouse leakage, claiming that to this extent such tax was "wrongfully collected": *Held* that under the provisions of the internal-revenue laws in force at the time (acts of July 13, 1866, chap. 184, and July 20, 1868, chap. 186) the tax was chargeable upon spirits in warehouse according to the quantity originally deposited therein, without regard to leakage, and that the tax in the above case upon the whole quantity originally deposited being therefore exacted *pursuant to law*, there was in the collection thereof "nothing wrongful" within the meaning of section 3220 Rev. Stat., and accordingly the case is not one wherein the Commissioner is authorized by that section to refund. *Opinion of May* 5, 1880, 16 Op. 667.

X. Forfeiture.—Compromise.

78. The course of proceeding to be observed in execution of the one hundred and second section of the act of July 20, 1868, chap. 186, relative to the compromise of suits under the internal-revenue laws, considered and indicated. *Opinion of Sept.* 1, 1868, 12 Op. 472.

79. Under section 102 of the act of July 20, 1868, chap. 186, the Commissioner of Internal Revenue has power to compromise cases arising under the internal-revenue laws, before suit, with the advice of the Secretary of the Treasury; but after the commencement of a suit or proceeding in court, the recommendation of the Attorney-General is also necessary. *Opinion of July* 27, 1871, 13 Op. 479.

80. The power to compromise, under that section, ceases as soon as the judgment in the suit or proceeding is rendered. *Ibid.*

81. But by virtue of authority conferred by section 10 of the act of March 3, 1863, chap. 76, judgments obtained by the United States in civil proceedings instituted under the internal-revenue laws may be compromised by the Secretary of the Treasury, upon the report and recommendation of the attorney or agent of the Government and of the Solicitor of the Treasury. *Ibid.*

82. The provision in section 179 of the act of June 30, 1864, chap. 173, as amended by the act of July 13, 1866, chap. 184, for compromising internal-revenue cases, is repealed by section 102 of the act of July 20, 1868, chap. 186. *Opinion of Sept.* 6, 1871, 13 Op. 525.

83. The Commissioner of Internal Revenue is not authorized by section 102 of the act of July 20, 1868, chap. 186, to compromise cases in which internal-revenue officers are charged with embezzlement under the sixteenth section of the act of August 6, 1846, chap. 90, the provisions whereof are made applicable to such officers by the internal-revenue law of June 30, 1864, chap. 173. *Opinion of Feb.* 7, 1872, 14 Op. 8.

84. The words "all cases arising under the internal-revenue laws," in the former section, mean those cases wherein the tax-payer, and not the tax-collector, is the party seeking a compromise. *Ibid.*

85. Where an assessor of internal revenue was indicted upon the provisions of section 30 of the act of March 2, 1867, chap. 169, and of sections 97 and 98 of the act of July 20, 1868, chap. 186, for having entered into a corrupt arrangement with certain distillers to defraud the Government, and before trial proposed terms of compromise to the Commissioner of

Internal Revenue, under section 102 of the last-mentioned act: *Held* that the case does not come within the purview of the latter section. *Opinion of May* 15, 1872, 14 Op. 43.

86. Where an act is committed by the owner of a distillery by which a forfeiture thereof is incurred under the revenue laws, and subsequently the owner conveys the property to an innocent purchaser without notice of the commission of the act, the property remains still subject to the forfeiture incurred. The conveyance, in such case, passes no title as against the United States. *Opinion of June* 8, 1878, 16 Op. 41.

87. The Commissioner of Internal Revenue has not authority, with the concurrence of the Attorney-General and the Secretary of the Treasury, to compromise a tax legally due from a railroad company (the same being solvent) for a sum less than the amount of the tax. The authority to compromise conferred by section 3229 Rev. Stat. does not permit the voluntary relinquishment of a part of a tax lawfully assessed upon and due from a solvent person or corporation. *Opinion of Jan.* 14, 1879, 16 Op. 249.

XI. Informer's Shares.

88. Internal-revenue officers are not excluded from claiming and receiving informer's shares. *Opinion of May* 13, 1870, 13 Op. 229.

89. The provisions of the one hundred and seventy-ninth section of the act of June 30, 1864, chap. 173, as amended by the act of July 13, 1866, chap. 184, relating to such shares, are expressly applicable only to cases not otherwise provided for; but where it is not otherwise provided for, they are applicable, whether the fine, penalty, or forfeiture is recovered or is recoverable by indictment, or information, or action of debt. *Ibid.*

90. The form of the prosecution is immaterial in respect to the rights of any person claiming as informer; and under the statutes now (May, 1870) in force, the fact that a fine or penalty can be recovered only by indictment is no objection to the claim of any person to be declared informer. *Ibid.*

91. The statute does not state to whom the first information must be given in order to entitle the person giving it to be declared informer; but the intention is that it should be given to the United States; that is, to some person representing the United States for the purpose of administering the internal-revenue laws. *Ibid.*

92. A communication, however, from one revenue officer to another, or from a revenue officer to a United States attorney, or *vice versa*, is not *first informing* within the meaning of the statute. *Ibid.*

93. Internal-revenue officers, who by law are authorized to enter and inspect buildings and places used for certain purposes, may become entitled to share as informers, if in the performance of such service they first discover the cause, matter, or thing, whereby a fine, penalty, or forfeiture has been incurred. *Ibid.*

94. Whether a subordinate officer, acting under instructions of his official superior, is in such case to be regarded as an informer in consequence of what he discovers while so acting, depends upon how far his discoveries were the result of his own exertion and skill, and how far they were the result of the instructions given him. *Ibid.*

95. The right of an internal-revenue officer to be declared an informer in any case does not depend upon the particular office he holds, but upon what he himself has discovered and done to insure the recovery of any fine, penalty, forfeiture, or the payment of moneys in lieu thereof. *Ibid.*

96. An internal-revenue officer, who has obtained information of a violation of internal-revenue laws in the manner authorized thereby, may be awarded an informer's share of the proceeds of the fine or forfeiture. *Opinion of June* 7, 1871, 13 Op. 369.

97. Detectives employed in the internal-revenue service under section 50 of the act of July 20, 1868, chap. 186, may be allowed informer's shares. *Ibid.*

XII. Property in Custody, &c., of Court.

98. Where a lot of ale, while still within the brewery in which it was made, was seized under judicial process emanating from a State court as a forfeiture to the State, and is in the custody of the sheriff awaiting the judgment of the court: *Held* that the possession of the sheriff cannot be legally interfered with by internal-revenue or other officers of the United States. Nor can those officers legally interfere with the sale of such property by the sheriff in the execution of a judgment of condem-

tion by the court. *Opinion of Feb.* 20, 1874, 14 Op. 370.

99. When, however, the property passes from under the control of the court, and goes again into private hands, it may be dealt with under the internal-revenue laws as such laws provide. Hence, in case it is removed from the brewery without the internal-revenue tax thereon being paid, the United States officers may seize it after the sale by the State authorities, and when it passes into the possession of the purchaser, for non-payment of such tax. *Ibid.*

INTERNATIONAL EXHIBITION.

1. The President has power to fill vacancies happening subsequent to March 3, 1872, in the Centennial Commission created by the act of March 3, 1871, chap. 105, on the nomination of the governors of the States and Territories respectively. *Opinion of May* 22, 1872, 14 Op. 48.

2. The property of exhibitors at the International Exhibition, at Philadelphia, in 1876, will not be liable to seizure for any debts, claims, or demands whatsoever against the Centennial Commission, or against any other corporate body, person, or association of persons connected with said exhibition. *Opinion of Nov.* 27, 1874, 14 Op. 503.

INTERNATIONAL LAW.

See also BLOCKADE; CAPTURE; DIPLOMATIC AND CONSULAR OFFICERS; NEUTRALITY; PRIZE; REPRISAL.

I. *Generally.*
II. *Claims for Indemnity.*
III. *Exterritoriality.*
IV. *Jurisdiction of Local Authorities.*
V. *Sea Letter.*

I. Generally.

1. The law of nations, although not specially adopted by the Constitution or any municipal act, is essentially a part of the law of the land. Impliedly, it is considered by the act of April 30, 1790, chap. 9, affixing penalties to certain crimes, as being in force, and some of its subjects thrown under particular provisions. (See sections 25 to 28.) *Opinion of June* 26, 1792, 1 Op. 27.

2. The law of nations does not allow reprisals except in case of violent injuries directed and supported by the State, and the denial of justice by all the tribunals and the sovereign. *Opinion of April* 12, 1793, 1 Op. 30.

3. It is an offense against the law of nations for any persons, whether citizens or foreigners, to go into the territory of Spain with intent to recover their property by their own strength, or in any manner other than its laws permit. *Opinion of Jan.* 26, 1797, 1 Op. 68.

4. The seizure of an American vessel by another, also American, within the jurisdiction of a foreign Government, for an infringement of our revenue or navigation laws, is a violation of the territorial authority of the foreign Government. *Opinion of Nov.* 29, 1843, 4 Op. 285.

5. To whatever extent a ship of war of the United States may be justified in seizing upon the high seas a vessel of the United States sailing in violation of the laws thereof, and bringing her into our ports for trial and condemnation, no such authority to seize for such an offense can be rightfully exerted within the jurisdictional limits of a foreign power. *Ibid.*

6. The Government ought not to form an opinion upon the affair of the Peacock and Nautilus upon *ex parte* reports transmitted by the British minister. A court of inquiry will doubtless be the proper step. *Opinion of June* 24, 1816, 5 Op. 703.

7. According to the law of nations, neutrals have the right to purchase during war the property of belligerents, whether ships or anything else; and any regulation of a particular state, which contravenes this doctrine, is against public law, and in mere derogation of the sovereign authority of all other independent states. *Opinion of Aug.* 7, 1854, 6 Op. 638.

8. A citizen of the United States may at this time lawfully purchase a merchant ship of either of the belligerents—Turkey, Russia, Great Britain, France, or Sardinia; if purchased *bona fide*, such ship becomes American property and entitled as such to the protection and to the flag of the United States; and al-

though she cannot take out a register by our law, yet that is because she is foreign built, not because she is belligerent built; and she can obtain a register by special act of Congress. *Ibid.*

9. The different states of Christendom are combined, by religious faith, by civilization, by science and art, by conventions, and by usages or ideas of right having the moral force of law, into a community of nations, each politically sovereign and independent of the other, but all admitting much interchange of legal rights or duties. *Opinion of Nov.* 4, 1854, 7 Op. 18.

10. As between themselves, the general rule of public law is, that each independent state is sovereign in itself, and has more or less complete jurisdiction of all persons being, matters happening, contracts made, or acts done within its own territory. *Ibid.*

11. When we speak of the law of nations, we mean international law of the nations of Christian Europe and America. Our treaties with nations other than these bring them practically within the pale of our public law, but it is only as to *political* rights; municipal rights remain as they were. *Ibid.*

12. Belligerent ships of war, privateers, and the prizes of either are entitled, on the score of humanity, to temporary refuge in neutral waters from casualties of the sea and land. *Opinion of April* 28, 1855, 7 Op. 123.

13. By the law of nations, belligerent ships of war, with their prizes, enjoy asylum in neutral ports for the purpose of obtaining supplies or undergoing repairs, according to the discretion of the neutral sovereign, who may refuse the asylum absolutely, or grant it under such conditions of duration, place, and other circumstances, as he shall see fit, provided that he must be strictly impartial in this respect towards all the belligerent powers. *Ibid.*

14. Where the neutral state has not signified its determination to refuse the privilege of asylum to belligerent ships of war, privateers, or their prizes, either belligerent has a right to assume its existence, and enter upon its enjoyment, subject to such regulations and limitations as the neutral state may please to prescribe for its own security. *Ibid.*

15. The United States have not by treaty with any of the present belligerents bound themselves to accord asylum to either; but neither have the United States given notice that they will not do it; and of course our ports are open, for lawful purposes, to the ships of war of either Great Britain, France, Russia, Turkey, or Sardinia. *Ibid.*

16. The nations of Europe and America, while independent each of the other in political sovereignty, are yet associated together by common ties in a great commonwealth of states. *Opinion of May* 27, 1855, 7 Op. 230.

17. In their mutual intercourse, these nations recognize, and more or less obey, certain rules of right, partly natural and partly conventional, which oblige their consciences, and control their actions, in war as well as in peace, and which constitute the law of nations. *Ibid.*

18. This law of nations is subdivided into two great parts—one which treats of the reciprocal duties and rights of nations personified and in their public relation as nations, and another which treats of the duties and rights of each nation in its relation to individuals of another nation. *Ibid.*

19. Each of the nations of Europe and America has exclusive jurisdiction within itself to pass laws and to administer them, and to employ its aggregate force to maintain obedience to its local authority, administered primarily for the good of the members of its own nationality. *Ibid.*

20. But each nation admits foreigners of other friendly nations to enter its territory for certain limited peaceful and private objects of commerce, instruction, social intercourse, denizenship, or the like; and the legal condition of such foreigners is regulated by the international law private, as distinguished from the public international law. *Ibid.*

21. None of the nations of Europe or America concede to transient, commorant, or denizen foreigners all the advantages of the domestic nationality; nor can such foreigners rightfully pretend to any special or exclusive rights or peculiar privileges at the hands of the local Government. *Ibid.*

22. It is a settled principle of the law of nations that no belligerent can rightfully make use of the territory of a neutral state for belligerent purposes without the consent of the neutral Government. *Opinion of Aug.* 9, 1855, 7 Op. 367.

23. The undertaking of a belligerent to enist troops of land or sea in a neutral state ithout the previous consent of the latter, is hostile attack on its national sovereignty. *bid.*

24. A neutral state may, if it pleases, perit or grant to belligerents the liberty to raise oops of land or sea within its territory; but r the neutral state to allow or concede this berty to one belligerent, and not to all, would e an act of manifest belligerent partiality and palpable breach of neutrality. *Ibid.*

25. The United States constantly refuse this berty to all belligerents alike, with impartial ustice; and that prohibition is made known o the world by a permanent act of Congress. *bid.*

26. Great Britain, in attempting, by the gency of her military and civil authorities in the British North American provinces, and her diplomatic and consular functionaries in the United States, to raise troops here, committed an act of usurpation against the sovereign rights of the United States. *Ibid.*

27. It was the practice of the Spanish crown, during the reigns of Charles I, and his successors of the Austrian dynasty, to delegate to Spanish viceroys, governors, and captains-general, the *jus legationis*, as well in Europe as in Asia and America; and that delegation was recognized by the public law of Europe. *Opinion of Oct.* 16, 1855, 7 Op. 551.

28. According to the public law of the monarchies of Europe, the authority of ministers, and perhaps of international commissioners, expires on the death, deposition, or abdication of the prince; but not so as between the American republics, in which the executive power is permanent and continuous, without regard to the governing person, and there is no interruption of the authority or renewal of the credentials of their public ministers on a change of President for whatever cause, provided such President continues to represent and exercise the appointing power of the Government. *Opinion of Oct.* 29, 1855, 7 Op. 582.

29. The United States observe, as their rule of public law, to recognize Governments *de facto*, and also governing persons *de facto*, without scrutiny of the question of legitimacy of origin or accession. *Ibid.*

30. Hence, in the case of the establishment of the new boundary line between Mexico and the United States, the Mexican commissioner, Mr. Salazar, being duly appointed by President Santa Anna, continued to be competent to act after the sequent accession of President Carrera, and his official agreement, signed then, if otherwise regular and complete, definitively establishes the line as respects the Mexican Republic. *Ibid.*

31. By the law of nations, one Government cannot enter upon the territories of another or claim any right whatever therein. *Opinion of March* 14, 1859, 9 Op. 286.

32. A grant of authority by a foreign Government to a citizen of the United States to improve in a solid manner an old wagon-road, so as to make it fit for the transit of wheeled carriages, does not comprehend the right of making a railroad. *Ibid.*

33. A cruiser of one nation has a right to know the national character of any strange ship she may meet at sea; but the right is not a perfect one, and the violation of it cannot be punished by capture and condemnation, nor even by detention. *Opinion of July* 28, 1860, 9 Op. 456.

34. The party making the inquiry must raise his own colors, or in some other way make himself fully known before he can lawfully demand such knowledge from the other vessel. *Ibid.*

35. If this is refused, the inquiring vessel may fire a blank shot, and in case of further delay a shotted gun may be fired across the bows of the delinquent. *Ibid.*

36. Any measure beyond this which the commander of an armed ship may take for the purpose of ascertaining the nationality of another vessel must be at his peril. *Ibid.*

37. This right of inquiry can be exercised only on the high seas, and no naval officer has the right to go into the harbor of a nation with which his Government is at peace to inquire into the nationality of a vessel which is lying there. *Ibid.*

38. Belligerents have the right to purchase arms in a neutral country, and to ship them therefrom at their own risk. *Opinion of March* 24, 1866, 11 Op. 451.

II. Claims for Indemnity.

39. The usage of Governments is not to interfere in the administration of justice until the foreign subject who complains has gone

with his case to the court of dernier resort. *Opinion of Feb.* 22, 1792, 1 Op. 25.

40. If the citizens of one state do an injury to the citizens of another, the government of the offended subject ought to take every reasonable measure to cause reparation to be made by the offender. But if the offender is subject to the ordinary processes of law, this principle does not generally extend to oblige the Government to make satisfaction in case of the inability of the offender. *Opinion of March* 11, 1802, 1 Op. 106.

41. There is no principle of the law of nations by which the Government is bound to answer in the first instance for the unlawful capture of its subjects, or becomes so from their insolvency or avoidance. Governments will sometimes, from policy, and under the special circumstances of the case, cause a reparation for injuries done by their subjects to others. But this is not considered to be within the great and obvious principles of national right. *Ibid.*

42. In its internal organization, each Government has public officers, administrative, judicial, or ministerial, which officers are the agents of the community for the conduct of its public or common affairs, and of many private affairs, and are individually responsible to their country, and in many cases to individuals, for acts of political or official misbehavior; but the Government itself is not responsible to private individuals for injuries sustained by reason of the acts of such officers in the private business with which they may be officially concerned, though as public agents yet for individual benefit only; it is responsible only for such injury to individuals as may occur by acts of such officers performed in the proper behoof and business of the Government. *Opinion of May* 27, 1855, 7 Op. 230.

43. Thus, Governments hold themselves responsible to individuals for injuries done to the latter by public officers in the collection of the revenue or other administrative acts of governmental relation; but not for the errors of opinion, or corruption even, of administrative, judicial, or ministerial officers, when such officers are administering their public authority in the interest of individuals as distinguished from the Government. *Ibid.*

44. Hence the State of California is not responsible to a citizen of the United States for injury which his vessel may have sustained by the unskillfulness of a pilot at San Francisco; and *a fortiori* that State is not responsible in such case if the vessel belonged to a citizen of the Peruvian Republic. *Ibid.*

45. Hence, also, the United States are not responsible to a citizen of the United States for the failure of a marshal to collect an execution; and *a fortiori* the United States are not responsible in such case if the execution belonged to a citizen of the Peruvian Republic. *Ibid.*

46. In such a case our courts of law are open to the individual who pretends himself aggrieved by the act of the pilot or that of the marshal; but the Government is not surety for their acts; and the Peruvian Republic has no rights of reclamation in the premises against the United States for any imputed default either of its own officer or the officer of the State of California. *Ibid.*

47. The rule of international law is well established that a foreigner who resides in the country of a belligerent can claim no indemnity for losses of property occasioned by acts of war of the other belligerent. *Opinion of Aug.* 31, 1866, 12 Op. 21.

48. American merchants domiciled for commercial purposes at Valparaiso cannot sustain a claim for indemnity against Spain or Chili for losses of merchandise in the conflagration caused by the bombardment of Valparaiso by the Spanish fleet in March, 1866. *Ibid.*

III. Exterritoriality.

49. A foreign ship-of-war, or any prize of hers in command of a public officer, possesses, in the ports of the United States, the rights of exterritoriality, and is not subject to the local jurisdiction. *Opinion of April* 28, 1855, 7 Op. 123.

50. A prisoner of war on board a foreign man-of-war or her prize cannot be released by *habeas corpus* issuing from courts either of the United States or of a particular State. But if such prisoner of war be taken on shore, he becomes subject to the local jurisdiction or not, according as it may be agreed between the political authorities of the belligerent and the neutral power. *Ibid.*

51. The exterritoriality of foreign consuls in Turkey and other Mohammedan countries is entirely independent of the fact of diplomatic

representation, and is maintained by the difference of law and religion, being but incidental to the fact of the established exterritoriality of Christians in all countries not Christian. *Opinion of July* 14, 1855, 7 Op. 342.

52. Consuls, as international commercial agents, originated in the colonial municipalities of the Latin Christians in the Levant, which municipalities were self-governing through their "consuls," the ancient title of municipal magistrates in Italy. *Ibid.*

53. Rights of private exterritoriality having ceased to exist in Christendom, foreign consuls have ceased, mostly, to be municipal magistrates of their countrymen there; but they still continue not only international agents, but also administrative and judicial functionaries of their countrymen in countries outside of Christendom. *Ibid.*

54. Citizens of the United States, in common with all other foreign Christians, enjoy the privilege of exterritoriality in Turkey, including Egypt; the same in the Turkish regencies of Tripoli and Tunis; and also in the independent Arabic states of Morocco and Muscat. *Opinion of Oct.* 23, 1855, 7 Op. 565.

55. Ships of war enjoy the full rights of exterritoriality in foreign ports and territorial waters. *Opinion of Sept.* 6, 1856, 8 Op. 73.

56. Merchant ships are a part of the territory of their country, and are so treated on the high seas, and partially but not wholly so while in the territorial waters of a foreign country. *Ibid.*

IV. Jurisdiction of Local Authorities.

57. A ship entering the port of a friendly nation with slaves on board is not, by the law of nations, responsible to the local authorities of that nation so long as the slaves remain on board. *Opinion of July* 20, 1842, 4 Op. 98.

58. In the case of a compulsory entry of a foreign port under an overruling necessity, the enforcement of the municipal law of that nation having jurisdiction over the port to the subversion of the authorities and rights guaranteed by its own country, is not in any respect justifiable. *Ibid.*

59. If a vessel be compelled by any overruling necessity to take refuge in the ports of a foreign nation, she is not subject to the municipal law of that nation so far as concerns any penalty, prohibition, tax, or incapacity that would otherwise be incurred, provided she do nothing further to violate the municipal law during her stay. *Ibid.*

60. In port the local authority has jurisdiction of acts committed on board of a foreign merchant ship while in port, provided those acts affect the peace of the port, but not otherwise; and its jurisdiction does not extend to acts internal to the ship or transpiring on the high seas. *Opinion of Sept.* 6, 1856, 8 Op. 73.

61. The authority of the ship's country in these cases is not taken away by the fact that the actors are foreigners, provided they be of the crew or passengers of the ship. *Ibid.*

62. The local authority has right to enter on board a foreign merchantman in port for the purpose of inquiry universally, but for the purpose of arrest only in matters within its ascertained jurisdiction. *Ibid.*

V. Sea-Letter.

63. A sea-letter given to a foreign merchant vessel by the commander of a ship-of-war in time of war, does not convert such vessel into American property. *Opinion of July* 25, 1854, 6 Op. 630.

64. A Frenchman, commercially domiciled in the Mexican Republic during the war between that Republic and the United States, who sailed his vessel under a license or letter of protection from the commander of an American ship-of-war, and who was afterwards prosecuted and subjected to loss on that account by the Mexican Government, cannot be redressed by the United States. *Ibid.*

INVALID AND DISABLED SOLDIERS.

1. The act of March 22, 1867, chap. 4, authorizing the Secretary of War to furnish each invalid soldier who is an inmate of any regularly-constituted soldiers' home with one complete suit of clothing, does not extend to those invalid soldiers who are inmates of the National Asylum for Disabled Volunteers or its branches. *Opinion of March* 14, 1872, 14 Op. 14.

2. The clothing thus authorized to be distributed is required, by the terms of the act, to be taken from the "stock on hand" at the time of its passage, and the managers of any such soldiers' home may make requisitions

therefor as long as that particular stock lasts, but no longer. *Ibid.*

3. By the act of May 28, 1872, chap. 228, entitled "An act to provide for furnishing trusses to disabled soldiers," Congress designed to furnish soldiers of the Union Army, who were ruptured while in the line of duty, with the best truss that could be procured; but left it discretionary with the Surgeon-General to adopt one style, or different styles, always keeping in view, however, the selection of that which in his judgment is best adapted to the particular case for which it is intended. *Opinion of July* 30, 1872, 14 Op. 72.

ISTHMUS OF PANAMA.

1. The act of the Government of New Granada conceding to a company the exclusive right to construct a railroad across the Isthmus of Panama must be construed so as to give that right within the true geographical boundaries of the Isthmus. *Opinion of Sept.* 19, 1859, 9 Op. 391.

2. Those boundaries do not extend on the north to the Costa Rica line, nor do they include the Isthmus of Chiriqui. *Ibid.*

JUDGMENT.

A definitive judgment, decree, or condemnation are legal terms, and have a technical meaning; they are synonymous with *final* judgment, decree, and condemnation. The words *final* and *definitive*, in law or in common parlance, have the same meaning. A final judgment or decree is that which puts an end to the suit, by declaring that the plaintiff or libelant has or has not entitled himself to recover the object of his suit; and it is opposed to an interlocutory or intermediate judgment or decree. *Opinion of June* 17, 1802, 1 Op. 114.

JUDICIARY FUND.

1. Where the marshal of a Territory expended upwards of $20,000 in carrying the judges to the courts with a guard, he cannot be allowed such expenses either by the accounting officers or by the President, under the act of August 31, 1852, chap. 108. *Opinion of Aug.* 25, 1857, 9 Op. 73.

2. The expenses of a judge in traveling to his courts are his own expenses, and not those of the marshal, and are, therefore, not properly incurred by a *ministerial* officer in the *execution* of the law. *Ibid.*

3. Under the said act of 1852, extraordinary expenses of a ministerial officer, incurred in the execution of the law, cannot be allowed by the President, unless such expenses be regularly taxed; and taxation is not legal or regular unless it be made in and by the proper court duly organized, with a quorum of judges on the bench, in regular session, and a record is made of their decision. *Ibid.*

4. Where a district attorney, prior to the passage of the act of August 2, 1861, chap. 37, made a seizure of telegraphic dispatches at the instance of the Secretary of War and the Attorney-General: *Held* that his compensation therefor was payable out of the judiciary fund. *Opinion of Sept.* 18, 1861, 10 Op. 124.

5. Since the act of August 2, 1861, the compensation of a district attorney for any professional service rendered by direction of the Attorney-General, for which compensation is not provided by the act of February 26, 1853, chap. 80, is payable out of the judiciary fund. *Ibid.*

6. The Secretary of the Interior has no power to make requisitions on the judiciary fund for money to be advanced to marshals of the United States, to be used in efforts to detect counterfeiters of the United States Treasury notes. *Opinion of April* 9, 1862, 10 Op. 225.

JURISDICTION.

See also CESSION OF JURISDICTION; COURTS, I; COURT-MARTIAL, II.

1. When one Department of the Government has lawfully assumed jurisdiction of a particular case, any other co-ordinate Department should decline to interfere with or assume to control its legitimate action. *Opinion of Oct.* 20, 1864, 11 Op. 117.

2. The persons charged with the murder of the President are triable by a military court. *Opinion of April* 28, 1865, 11 Op. 215.

JURY DE MEDIATATE.

1. A person born in Ireland, but naturalized as a citizen of the United States, is not entitled, when arraigned in a British court for the offense of treason-felony, to the privilege of a jury *de mediatate*. *Opinion of Nov.* 26, 1867, 12 Op. 320.

2. That right, being conferred by British law, must, in a British court, be regulated by that law. *Ibid.*

3. It is well-established English law that a native-born subject of Great Britain is not capable of throwing off his allegiance. *Ibid.*

4. The statutes of the United States make no provision for trial by jury *de mediatate*. *Ibid.*

5. The right to a jury *de mediatate* does not exist at this time in any of the States of the Union. *Ibid.*

6. The United States have no right to complain that one of its citizens, indicted for a crime in Great Britain, is not entitled to a privilege not accorded by Federal or State law to a subject of Great Britain indicted for crime committed in the United States. *Ibid.*

LAKES.

The right and title to the lake shore of the great lakes is in the several States, not in the United States. *Opinion of Oct.* 19, 1853, 6 Op. 172.

LAND-GRANT ROADS.

1. Provision in the act of June 16, 1874, chap. 285, prohibiting payment of any part of the money appropriated by that act for transportation of property or troops of the United States over any railroad constructed by the aid of a grant of public land on the particular condition therein referred to, or "upon any other conditions for the use of such road for such transportation," examined and explained. *Opinion of June* 29, 1874, 14 Op. 663.

2. The prohibition alluded to applies to railroads whose land grants are conditioned for a *preference* in transportation, or for *ordinary* rates of transportation, or for *average* rates, &c., where such service is required by the Government, as well as to railroads whose land grants contain a condition in favor of the Government (like the one mentioned in said provision) for *free transportation*. *Ibid.*

3. But it is inapplicable to railroads in whose land grants no conditions for the use of said roads by the Government appear. *Ibid.*

4. The prohibition in the act of June 16, 1874, chap. 285, forbidding payment for the transportation of troops or property of the United States over any railroad which, in whole or in part, was constructed by the aid of a grant of public land on condition that said railroad should be a public highway for the use of the Government, &c., is applicable to so much of the road as lies between the termini thereof which existed at the time the grant was made. Extensions subsequently made beyond either terminus, as well as leased roads, &c., are not affected by the prohibition. *Opinion of July* 30, 1874, 14 Op. 428.

5. In the matter of a claim of the Burlington and Missouri River Railroad Company of Nebraska for military transportation: *Advised* (after review of the act of May 15, 1856, chap. 28; sections 18, 19, and 20 of the act of July 2, 1864, chap. 216; section 6 act of July 1, 1862, chap. 120; and joint resolution of April 10, 1869, which relate to the establishment of the road in Nebraska; and upon consideration of the provisions of the acts of June 16 and 22, 1874, and of March 3, 1875, forbidding the payment of military transportation to a certain class of railroads) that payment be withheld from the company until its right thereto is judicially established. *Opinion of March* 8, 1878, 15 Op. 459.

6. The act of July 25, 1866, chap. 241, sections 1 to 5, the act of July 12, 1876, chap. 179, section 13, and the act of March 3, 1877, chap. 125, considered; and *held* that upon the acceptance by the Missouri River, Fort Scott and Gulf Railroad Company (formerly the Kansas and Neosho Valley Railroad Company) of the terms and conditions of the said act of March 3, 1877, according to the provisions thereof, that act became binding upon the company from its date, and that the road of the company should be treated as a non-land-grant road from such date (March 3, 1877). *Opinion of April* 28, 1880, 16 Op. 481.

LANDS ACQUIRED FOR PUBLIC USES.

See also CESSION OF JURISDICTION; EMINENT DOMAIN; GRANT TO THE UNITED STATES; PURCHASE OF LAND.

I. *Generally.*
II. *Exclusive Jurisdiction Over.*
III. *License to Occupy.*
IV. *National Cemeteries.*

I. Generally.

1. The proceedings in the circuit court of the county of Nassau (Florida) will have vested the United States with the title to a tract of land on Amelia Island when the conveyance is executed. *Opinion of July 6*, 1850, 5 Op. 239.

2. The accretion of several acres of land at the mouth of the Chicago River, formed from earth washed there by the waters of Lake Michigan, and deposited against a pier constructed by the General Government for the improvement of the harbor, must be regarded as belonging to the United States. *Opinion of Oct.* 4, 1850, 5 Op. 264.

3. The title of M. to land on which the United States have erected a fort at the mouth of Bay Desprez and Lake Borgne and lands adjoining is invalid. *Opinion of Oct.* 22, 1851, 5 Op. 402.

4. The Solicitor of the Treasury should commence an action in behalf of the Government to try the title, as M., being in possession, cannot, if he would, institute a suit against the United States to quiet his claim. *Ibid.*

5. A patent issued to F., which was founded on a Virginia land warrant, located on the shore of Chesapeake Bay, including the shore between high and low tide. It also included an alluvion formed since the grant to the United States by Virginia of 250 acres of land, embracing Old Point Comfort, whereby his location nearly surrounded Fort Monroe: *Held* that although such alluvion would be an increase of the 250 acres originally granted to the United States, yet by the law of nations, and by the statutes of Virginia of 1679, 1819, and 1849, the title to the same is in the United States. *Opinion of Nov.* 11, 1851, 5 Op. 412.

6. The rule of the English common law that private rights to lands bordering on the sea, or a bay, or a river where there is a flux and reflux of the sea, should be limited to high-water mark, has not obtained in Virginia since the 31st Charles II. *Ibid.*

7. Natural boundaries prevail over artificial boundaries. *Ibid.*

8. The title of the United States to lands in San Francisco, noted on the plan of the town as Government reserves, appears to be valid. *Opinion of Nov.* 17, 1851, 5 Op. 447.

9. The authorities of San Francisco originally derived their title to the town site by an official deed from General Kearney, civil and military governor, in which deed the reservations were made. If that conveyance was valid, then the title of the Government to the reserves is valid; if invalid, then all the lands therein mentioned belong to the United States under the treaty of Guadalupe Hidalgo. *Ibid.*

10. To avoid litigation it is advised that a deed be procured of the authorities of San Francisco, relinquishing all claim to these reserves. *Ibid.*

11. Land purchased or reserved by the United States for light-houses, barracks, navy-yards, and other like purposes, are not included in the designation of "public lands." *Opinion of Aug.* 4, 1852, 5 Op. 578.

12. The Executive cannot lawfully expend money on a site for public uses purchased with assent of the State in which it lies if with express refusal of the latter to cede jurisdiction to the United States. *Opinion of Sept.* 17, 1856, 8 Op. 102.

13. Title of the United States to certain land held thereby at Sandy Hook, N. J., reviewed; said land embracing the entire tract bounded southwardly by a line running east from the mouth of Young's Creek at low water to the sea, and on every other side by the sea. And *held* that there are no existing legal rights to said land in conflict or incompatible with the exclusive right and title of the United States. *Opinion of Nov.* 22, 1878, 16 Op. 206.

II. Exclusive Jurisdiction Over.

14. The site of the navy-yard at Pensacola having been reserved out of the public domain of the United States for naval purposes while Florida was a Territory, and jurisdiction over such site not having been ceded by the legislature of Florida after its admission as a State: *Advised* that, in this case, application be made to

State for a cession of its jurisdiction there- to the United States; as, without such on, the latter cannot claim exclusive juris- on over the premises. *Opinion of Oct.* 24, , 7 Op. 571.

. Jurisdiction is acquired by the United es by the consent of a State to the purchase nd within the same for constitutional uses e Union. *Opinion of Feb.* 11, 1856, 7 Op.

. Phrases in legislative acts of the States ning concurrent jurisdiction for certain oses do not impair the Federal jurisdiction erred by the Constitution. *Ibid.*

. Consent of a State to the purchase of within it conveys in general jurisdiction e United States; but not when all juris- on is expressly reserved by the State. *ion of Aug.* 11, 1856, 8 Op. 31.

. The commissioners of the harbor of Port- have no authority to prevent the depo- n of stone or other materials deemed nec- y by the officers of the United States for construction of a fort on Hog Island Ledge at harbor. The work has been author- by Congress, and the legislature of the e of Maine has ceded to the United States diction over the premises for the purposes he fort. *Opinion of March* 29, 1859, 9 Op.

9. Congress cannot acquire or assert exclu- jurisdiction over any part of the territory State without the consent of the State leg- ture; and hence, before such jurisdiction r a national cemetery can become vested in United States, the consent of the legisla- e of the State in which the cemetery is situ- d must be obtained, notwithstanding the vision of section 6 of the act of February 1867, chap. 61. *Opinion of July* 29, 1869, Op. 131.

0. Where compensation has been paid for d acquired under that act for a national netery, without having obtained the consent the State legislature to the acquisition, the per course to be taken is for the Secretary War to apply to such legislature for its con- nt. *Ibid.*

21. The purchase by the United States of e land occupied by Fort Trumbull, Connec- ut, and the consent of the State legislature the purchase, though a formal cession of risdiction is wanting, give to Congress the exclusive power of legislation over the pur- chased land. *Opinion of April* 15, 1871, 13 Op. 411.

22. The act of the Virginia legislature of January 14, 1871, providing for a cession of jurisdiction over the bridge across Mill Creek, at Old Point Comfort, Virginia, owned by the Government, proposes in effect that the United States shall have exclusive jurisdiction over the bridge and its abutment (with concurrent jurisdiction in the State for the execution of process) so long as the bridge is kept up and maintained by the Government for military purposes, and the public are permitted to pass over the same free of charge, and no longer: *Advised* that there would be no impropriety in accepting the grant of jurisdiction executed by the governor of the State in pursuance of said act, upon the terms proposed. *Opinion of May* 18, 1871, 13 Op. 419.

23. The act of the legislature of New Jersey, mentioned in this case, considered insufficient to meet the requirements of the law of September 11, 1841 (5 Stat., 468), in regard to the cession of jurisdiction over certain land purchased by the United States, at Finn's Point, in that State. *Opinion of June* 22, 1871, 13 Op. 461.

24. Such transfer of jurisdiction may take place in two ways: indirectly, by the State consenting to the *purchase* of the land by the United States; and directly, by the State granting the jurisdiction to the United States. *Ibid.*

25. The United States have over lands within a State held for national cemeteries or other public purposes, which were acquired by the former without the consent of the State, or over which the latter has not ceded its jurisdiction, only such jurisdiction as they have over other parts of the State wherein they possess no proprietary interests. *Opinion of April* 2, 1875, 14 Op. 558.

26. The *mere ownership* of the land does not put the United States in a different position, as regards the matter of jurisdiction over it, than they occupied previous to its acquisition; nor is the situation of the State, with reference to the same matter, in any degree altered thereby. *Ibid.*

27. Strictly speaking, therefore, where the United States own land situated within the limits of a State, but over which the State has

not parted with its jurisdiction, they cannot be taken to have exclusive jurisdiction over such land. *Ibid.*

28. Consent of the legislature of Texas to the purchase by the United States of the building site recently acquired in the city of Austin was given by operation of a law of that State passed April 4, 1871. *Held* that such consent worked a transfer of jurisdiction over the site from the State to the United States when the title to the site became vested in the latter. *Opinion of April* 10, 1878, 15 Op. 480.

29. The superintendent of a national cemetery, over which the State has ceded jurisdiction to the United States, and within the limits of which he resides, is exempt from the duty devolved by the State upon all male persons between certain ages to work on the public roads. Otherwise if the State has not ceded jurisdiction, or if the superintendent resides elsewhere within its jurisdiction. *Opinion of Feb.* 7, 1880, 16 Op. 468.

III. License to Occupy.

30. The permission given by the President to the Long Branch and Sea-Shore Railroad Company in 1864, and that given to the same company with the approval of the Secretary of War in 1869, to occupy and use, for railroad purposes, a part of certain land of the United States at Sandy Hook, N. J., conferred upon the company no interest whatever in the land itself. They constitute nothing more than a license, which is revocable at any time by the President or the duly authorized agents of the War Department; and upon the revocation thereof all the privileges derived thereunder by the company would terminate. *Opinion of Nov.* 22, 1878, 16 Op. 206.

31. So, by the terms of the agreement made March 31, 1854, with the New York and Sandy Hook Telegraph Company, *it* may be put an end to at any time at the pleasure of the Government, whereupon all rights and privileges derived by that company thereunder would immediately cease. *Ibid.*

IV. National Cemeteries.

32. To authorize payment for land appropriated for the purpose of a national cemetery under the act of February 22, 1867, chap. 61, the consent of the legislature of the State in which the land lies is not necessary; nor, in such case, is the opinion of the Atto eral as to the validity of the title though, as a prudential measure for rity of the Government, it would s highly expedient to obtain his opinio *ion of July* 29, 1869, 13 Op. 131.

LANDS UNDER NAVIGA WATERS.

See also COMMERCE AND NAVIGAT

1. It is not competent to the Li Board to erect a light-house on G Raritan Bay (for the establishment provision is made by the act of June chap. 359), until title to the sites, t cated under navigable waters of t States, has been obtained for the Go *Opinion of July* 30, 1879, 16 Op. 370

2. The proprietorship of the soil u waters, within the territorial limits belongs absolutely to the State, subj the rights surrendered by the Const the General Government. *Ibid.*

3. Where lands of that description to enable the General Government t its proper functions (as *e. g.*, to estab houses), it may appropriate them for pose. This it may do, not by virt ownership in the soil, but by virt right of eminent domain. *Ibid.*

LEASE.

1. Legal effect of a lease of two years. *Opinion of May* 19, 1853, 8 O

2. At common law, an executor, pointed, succeeds to a trust vested i tator by the previous testator. *Opin* 23, 1853, 8 Op. 431.

3. Of the transmission of the test powers. *Ibid.*

4. In general, a lessee has the rig derlet, unless there be a covenant t trary in the original lease. *Opinion o* 1855, 7 Op. 598.

5. Property was leased to the Uni for a term of years, at a stated mon before Treasury notes were made leg After such notes were made legal t

rent was payable in them, and by their depreciation the rent reserved in the lease became very inadequate: *Held* that the officer by whom the contract was made cannot, during the term, increase the rent to meet the supposed equity of the case. *Opinion of June* 29, 1864, 11 Op. 51.

6. A building in Chicago, known as "The Arcade," was leased to the United States, "to have and to hold, &c., from the 3d day of May, 1874, for and during the term of three years thence next ensuing." The lease contained a clause providing that the lessor might use such part of the building as was not needed by the lessee, "in accordance with the terms of acceptance of said building by the Hon. Secretary of the Treasury, as shown by copy of his letter, attached hereto, and made part of this agreement." This letter, after referring to a proposition made in behalf of the owner of the premises to lease so much of the same as may be needed by the Government "until the public building to be erected in Chicago is ready for use," states under what circumstances the owner would be permitted to occupy a part of the premises, and "upon these conditions" the Secretary concludes to take the building: *Held* that the term of the leasehold is governed (not by the letter of acceptance, in which case it might endure beyond three years, but) by the provision in the lease above quoted, which definitely limits its duration to three years from the 3d of May, 1874. *Opinion of Feb.* 21, 1877, 15 Op. 613.

7. The hire of a building to be used as an office by the officer assigned to the duty of taking charge of the construction of the State, War, and Navy Department building, &c., is in violation of the act of March 3, 1877, chap. 106, which prohibits the renting of any building, or part of any building, for Government purposes in the District of Columbia, "until an appropriation therefor shall have been made in terms by Congress." *Opinion of May* 18, 1877, 15 Op. 275.

LEGAL REPRESENTATIVES.

The words "legal representatives" in a statute generally intend executors and administrators, but may, according to the context and subject-matter, intend heirs at law. *Opinion of March* 9, 1855, 7 Op. 60.

LEGAL TENDER.

Treasury notes issued under the various acts of Congress enacted prior to the act of the 25th of February, 1862, chap. 33, are not a legal tender. *Opinion of March* 4, 1862, 10 Op. 196.

LETTER OF MARQUE.

Where an American vessel commissioned with a letter of marque and reprisal was sold to foreigners, and the new owners were found cruising with the same commander and letter under the American flag, and there was reason to suppose that the commission had been intentionally transferred: *Held* that it was such an abuse of it as to justify a suit upon the bond. *Opinion of Dec.* 5, 1814, 1 Op. 179.

LIBEL.

1. Any malicious publication tending to render another ridiculous, or to expose him to public contempt and hatred, is a libel; and in the case of a foreign public minister the municipal law is strengthened by the law of nations, which secures the minister a peculiar protection from violence and insult. *Opinion of Sept.* 17, 1794, 1 Op. 52.

2. Certain letters addressed to Philip Fatio and published, concerning the King of Spain and his minister plenipotentiary here, are libelous, and the editor is indictable. *Opinion of July* 27, 1797, 1 Op. 71.

3. A malicious defamation of any person, and especially a magistrate, by printing, writing, signs, or pictures, in order to provoke him to wrath, or expose him to public hatred, contempt, and ridicule, is a libel. *Ibid.*

LIBERIA.

There is no law authorizing the agent of the United States residing at Liberia, pursuant to the act of March 3, 1819, chap. 101, to purchase arms for defense of the negroes. *Opinion of Sept.* 21, 1829, 2 Op. 272.

LICENSE OF VESSELS.

See COMMERCE AND NAVIGATION, II.

LIEN.

An attorney of record of the claimant in a case prosecuted to judgment against the United States in the Court of Claims has no lien on the judgment, or on the money payable under it, for his fees as such attorney; nor has he any equitable interest in the judgment, or the money payable upon it, which the Government is bound to protect in payment of the judgment. *Opinion of July* 25, 1867, 12 Op. 216.

LIME POINT, CALIFORNIA.

The facts in relation to certain negotiations, during the administrations of Presidents Pierce and Buchanan, for the purchase of Lime Point Bluff, California, do not show such an agreement to purchase that property as would bind the Government if it were an individual. *Opinion of Feb.* 7, 1862, 10 Op. 171.

LIMITATION.

See also COURT-MARTIAL, II.

I. *Civil and Criminal Proceedings.*
II. *Military Offenses.*

I. Civil and Criminal Proceedings.

1. No right of action accruing to the United States is barred by lapse of time, unless where there may be special provision by act of Congress to that effect. *Opinion of Jan.* 9, 1856, 7 Op. 614.

2. There is no statute of limitations against the Government, and mere lapse of time can therefore not be applied as a legal bar to a public claim; but the natural presumption of fact which arises from lapse of time is as just an element of decision against the Government as against an individual. *Opinion of July* 21, 1858, 9 Op. 198.

3. Section 3 of the act of March 2, 1863, chap. 67, to prevent and punish frauds upon the Government, contemplates two proceedings, one civil and the other criminal; of which the former is subject to the limitation prescribed by the seventh section of that act, and the latter to that prescribed by the thirty-second section of the act of April 30, 1790, chap 9. *Opinion of June* 7, 1872, 14 Op. 54.

4. The various statutes passed by Congress, applicable to civil and criminal proceedings under the internal-revenue laws, reviewed, and the following result reached: 1. That the third section of the act of March 26, 1804, chap. 40, furnishes the law of limitation as to all *criminal proceedings* under the internal-revenue acts, the period within which such proceedings must be commenced being five years. 2. That the same section perhaps, or, if not, then certainly the fourth section of the act of February 28, 1839, chap. 36, furnishes the law of limitation as to all proceedings for the recovery of *fines, penalties, and forfeitures* under the internal-revenue acts, the period being the same under either section, namely, five years. *Opinion of Aug.* 3, 1872, 14 Op. 81.

II. Military Offenses.

5. The accused cannot be tried by court-martial after two years from the issuing of the order, even on his own application, unless by reason of absence or some other manifest impediment he shall not have been amenable to justice within the time limited by the Articles of War. *Opinion of July* 25, 1820, 1 Op. 383.

6. According to the eighty-eighth of the Articles of War (act of April 10, 1806, chap. 20) no person is liable to be tried and punished by a general court-martial for any offense which shall appear to have been committed more than two years before the issuing of the order for such trial, unless the person, by reason of having absented himself, or some other manifest impediment, shall not have been amenable to justice within that period. *Opinion of Dec.* 30, 1853, 6 Op. 239.

7. This limitation cannot be waived by the accused, nor can he, even with his consent, be tried by a general court-martial ordered after the time prescribed by statute. *Ibid.*

8. But this limitation does not apply to courts of inquiry; for the objects of a court of inquiry are not confined to investigation as preparatory to a court-martial, but extend to the legal procurement of information of any sort material to the military service or the discipline and government of the Army. *Ibid.*

9. A prosecution of an officer before court-martial having been instituted, and the party arraigned within the two years required by

law, and he pleading the pendency of civil proceedings arising in the matter, whereupon the proceedings of the court-martial were suspended until a period after the lapse of two years: *Held* that the statute of limitations could not then be pleaded in the case. *Opinion of June* 5, 1854, 6 Op. 506.

10. The last clause of section 12 of the act of January 29, 1813, chap. 16, was not intended to repeal the eighty-eighth Article of War, so far as the offense of desertion is concerned, and thus allow a deserter to be tried at any time after the term of his enlistment. Notwithstanding two years may have elapsed since the commission of the offense, the limitation imposed by that article still applies. *Opinion of June* 23, 1871, 13 Op. 462.

11. The two years' limitation prescribed by the eighty-eighth Article of War applies to all offenses triable and punishable by court-martial, including those which may be thus tried and punished under the act of March 2, 1863, chap. 67. *Opinion of June* 12, 1872, 14 Op. 52.

12. The concealment of an offense by the accused is not a "manifest impediment" to his prosecution, within the meaning of that article, and does not prevent the limitation from running in his favor. *Ibid.*

13. Where a soldier belonging to the Ninth Regiment of Infantry deserted on the 19th of September, 1870, but in about one year afterward re-enlisted under an *alias* in the Sixth Regiment of Infantry, and (he having subsequently acknowledged that he was a deserter from the former regiment) an order was issued on the 11th of March, 1873, for his trial by a court-martial for desertion, of which offense he was thereupon tried by the court, convicted, and sentenced to punishment: *Held* that the prosecution was barred by the two years' limitation prescribed by the eighty-eighth Article of War, and that, consequently, the conviction and sentence of the court are void. *Opinion of June* 30, 1873, 14 Op. 266.

14. "Manifest impediment," as used in that article, does not mean merely want of evidence or ignorance as to the offender or offense by the military authorities, but it means something akin to absence—want of power or a physical inability to bring the party charged to trial. *Ibid.*

15. The two years' limitation provided by the one hundred and third Article of War (section 1342 Rev. Stat.) is applicable to the offense of desertion. *Opinion of Sept.* 1, 1876, 15 Op. 152.

16. The limitation begins to run from the commission of the offense, excepting in a case where, by reason of "manifest impediment," the accused is not amenable to justice within two years from that time. In such case it begins to run from the removal of the impediment. *Ibid.*

17. Desertion is a *continuing* offense—an offense which may endure (*i. e.*, be continually committed) from day to day after the period of its completion. But the continuing commission thereof is limited by the obligation to serve imposed upon the deserter by his engagement. When that obligation ceases to exist the commission of the offense necessarily terminates, and the limitation then begins to run in cases not excepted. *Ibid.*

18. *Held* accordingly, in case of desertion by an enlisted soldier, that (excepting where the offender has previously surrendered himself or been apprehended, or where, by reason of manifest impediment, he is not amenable to justice) the limitation begins to run from the last day of the term for which he enlisted. *Ibid.*

19. Absence without leave is not *per se* sufficient to prevent the limitation from running. *Ibid.*

20. Opinion of Attorney-General Taft, of September 1, 1876 (15 Op., 152), in regard to the application to the offense of desertion of the limitation provided in the one hundred and third Article of War, the nature of that offense, and the time when the limitation begins to run in favor of the deserter, the scope and effect of the exception contained in that article preventing the limitation from running in certain cases, the operation of the forty-eighth Article of War with respect to the deserter's term of service, &c., reaffirmed. *Opinion of Oct.* 16, 1878, 16 Op. 170.

21. The exception from the limitation contained in the one hundred and third Article of War (viz, when, by reason of having absented himself or of some other manifest impediment, the accused shall not have been amenable to justice within the period mentioned) does not produce any effect where the limitation itself would not otherwise run. Hence absence without leave *during the term of enlistment*, in the case of a deserter, is unimportant,

inasmuch as, the offense of desertion being a continuing one during such term, the limitation would not otherwise begin to run until the expiration thereof. *Ibid.*

22. Where the absence of the deserter continues after his term of service has expired, no presumption of law arises that he was not amenable to justice during such absence, and that his case is accordingly within the exception. The fact must be shown by evidence submitted at the trial. *Ibid.*

23. Nor is a plea of guilty, when it appears by the record that the order for trial was issued more than two years before the commission of the offense, to be taken as an admission by the accused of the existence of an exception withdrawing his case from the limitation. *Ibid.*

24. It is for the prosecution to show, as a matter of fact, in some other way than by the form of the pleadings, that by reason of having absented himself, or of some other manifest impediment, the accused was not amenable to justice within the two years. *Ibid.*

25. Opinion of October 16, 1878 (16 Op. 170), relative to trial and punishment by court-martial of deserters from the military service (in which the conclusions of Attorney-General Taft, in the opinion given by him on that subject dated September 1, 1876, were restated and concurred in), reaffirmed. *Opinion of Nov.* 25, 1879, 16 Op. 396.

LOUISVILLE AND PORTLAND CANAL.

1. The expenditure of the appropriation provided by the act of June 10, 1872, chap. 416, "for continuing the work on the canal at the Falls of the Ohio River," whether made with or without the consent of the Louisville and Portland Canal Company, will not affect any rights which the latter may now have as to tolls. *Opinion of Aug.* 7, 1872, 14 Op. 90.

2. The act of May 18, 1880, chap. 95, which abolished all tolls at the Louisville and Portland Canal after July 1, 1880, authorized the Secretary of War "to draw his warrant from time to time upon the Secretary of the Treasury to pay the actual expenses of operating and keeping said canal in repair." *Held* that, by fair implication from the provision quoted, the Secretary of the Treasury is thereby as fully authorized to pay the warrants drawn by the Secretary of War as if it had expressly declared that they should be paid out of any moneys in the Treasury not otherwise appropriated. *Opinion of Aug.* 14, 1880, 16 Op. 557.

3. That act compared with the provision in the act of June 14, 1880, chap. 211, directing the application of the money collected therefore as tolls on said canal, or which may thereafter "be so collected prior to the passage of an act to make said canal free to the public," &c., and the purpose of each enactment explained. *Ibid.*

MAIL CONTRACTOR.

See POSTAL SERVICE.

MAIL DEPREDATIONS.

See POSTAL SERVICE.

MAIL TRANSPORTATION.

See POSTAL SERVICE.

MARINE CORPS.

See also COMPENSATION, V.

I. *Generally.*
II. *Brevets.*
III. *Appointment and Dismissal of Officers.*
IV. *Retired List.*

I. Generally.

1. The Secretary of the Navy may suspend, modify, or rescind, at pleasure, any order issued to the lieutenant-colonel of the Marine Corps, or any other subordinate officer, except where a direct authority has been given by Congress to an officer to perform any particular function. *Opinion of July* 6, 1820, 1 Op. 380.

2. The President's orders to the Marine Corps should pass through the Secretary of the Navy, except when that corps is incorporated with the Army. *Ibid.*

3. Such allowances as are actually necessary
- the Marine Corps, although unauthorized
any act having express relation to that
rps, may be made by considering the acts
thorizing them to officers of the Army as
tending to the Marine Corps, wherever the
alogy is complete. *Opinion of July* 18, 1829,
)p. 223.

4. A lieutenant-colonel commanding Marine
rps cannot grant discharges to the marines
fore the expiration of their term of enlist-
nt; and until Congress shall otherwise pro-
le, such discharges can only be granted by
e President of the United States, or in con-
mity to such regulations as he may think
)per to prescribe. *Opinion of June* 29, 1830,
)p. 353.

5. Neither the pay, rations, nor clothing of
listed marines who are taken in custody by
e civil authorities for violations of the laws
a be withheld during their confinement and
sence from their military stations. *Opinion*
Nov. 18, 1830, 2 Op. 396.

6. In case the public service shall demand
the commandant of the Marine Corps may
)ploy a clerk in his office who shall not be
the corps; yet it is doubtful, perhaps,
hether any part of the appropriation made
r pay and subsistence can be paid any person
)t an integral part of the corps. *Opinion of*
pril 3, 1835, 2 Op. 707.

7. A quartermaster-sergeant, acting as a
erk in the office of the quartermaster of the
larine Corps, is entitled to the additional
)mpensation of 15 cents per day allowed
y the act of March 2, 1819, chap. 45, and paid
) the sergeant acting as clerk in the office of
he Quartermaster-General of the Army.
)pinion of May 13, 1836, 3 Op. 116.

8. By the application of the act of 2d March,
1827, chap. 42, to the Marine Corps, an assist-
ant quartermaster of marines was entitled
prior to the 30th June, 1834, to all the extra
pay and emoluments allowed to an assistant
quartermaster in the Army similarly situated.
Opinion of July 11, 1837, 3 Op. 266.

9. A captain or subaltern in the command
of a detachment of marines is entitled to re-
ceive the $10 per month, as provided by the
said act for the officer commanding a company
in the Army. *Ibid.*

10. An officer in the actual command of any
number of men sufficiently large to constitute
a detachment of marines, according to the
usage of the Navy Department, will be en-
titled to the allowance given in the second
section of the act of March 2, 1827, chap. 42.
Opinion of July 21, 1838, 3 Op. 342.

11. The act of July 25, 1861, chap. 19, does
not repeal the proviso to the third section of the
act of March 2, 1847, chap. 40, separating the
staff from the line of the Marine Corps. *Opin-
ion of Feb.* 27, 1862, 10 Op. 193.

II. Brevets.

12. As no such officer as brevet major of
marines is recognized by any act of Congress
now in force, the President cannot confer that
rank under the act of April 16, 1814, chap. 58.
Opinion of April 22, 1820, 1 Op. 352.

13. The act of 3d March, 1817, chap. 65,
fixing the peace establishment of the Marine
Corps, not having retained any majors in
service, the brevets previously conferred were
thereby made to cease with the termination of
the lineal rank of majors by commission.
Opinion of Aug. —, 1821, 1 Op. 489.

14. Since the act of 3d March, 1817, chap.
65, the only brevet rank of major which the
President can confer is that of brevet major in
the Army of the United States. *Opinion of
Dec.* 11, 1822, 1 Op. 578.

15. If it shall be deemed inexpedient to
confer upon a captain of marines the brevet
rank of major in the Army, then he is entitled,
if entitled at all to promotion, to the brevet
rank of lieutenant-colonel in the Marine Corps.
Ibid.

16. Brevet officers of the Marine Corps are
entitled to the same pay and emoluments
which are allowed to officers of similar grades
in the infantry of the Army. *Opinion of Feb.*
19, 1852, 5 Op. 513.

III. Appointment and Dismissal of Officers.

17. The commandant of the Marine Corps
possesses no power either to appoint or dismiss
a paymaster, quartermaster, or an inspector
thereof, the act of July 11, 1788, chap. 72,
contemplating nothing more than a matter
occasional and transitory. *Opinion of Feb.* 22,
1828, 2 Op. 77.

18. The power of appointing the paymaster,
quartermaster, and adjutant and inspector to
the Marine Corps, when stationed permanently

on shore, in time of peace, belongs to the President and Senate. *Ibid.*

19. By the sixth section of the act of June 30, 1834, chap. 132, the staff officers of the Marine Corps are required to be taken from the captains or subalterns of the corps; wherefore only those are qualified to act as such staff officers who have, at the same time, a lineal rank as captains or subalterns. *Opinion of Oct.* 5, 1844, 4 Op. 340.

20. A captain or lieutenant of the Marine Corps holding a staff appointment is still such captain or lieutenant, and entitled to promotion in the line as though such staff appointment had never been conferred. His acceptance in the one does not produce any vacancy in the other. *Opinion of April* 11, 1845, 4 Op. 422.

21. The President may lawfully give Mr. Stoddard a commission as second lieutenant in the Marine Corps under the circumstances of his case. *Opinion of July* 1, 1862, 10 Op. 308.

22. Where a captain in the Marine Corps, in whose favor an examining board convened by the Secretary of the Navy under the seventeenth section of the act of August 3, 1861, chap. 42, had made a favorable report, was, notwithstanding such report, subsequently (in December, 1864) dismissed from the service by a general order of the Navy Department: *Held* that the officer was lawfully removed from the service. *Opinion of March* 24, 1869, 13 Op. 3.

23. At that period, by virtue of the seventeenth section of the act of July 17, 1862, chap. 200, the President was fully invested with a statutory power of summary dismissal respecting officers in the Army, Navy, and Marine Corps, which it was competent to him to exercise at discretion. *Ibid.*

24. The order of dismissal promulgated by the Secretary of the Navy, though containing no express reference to the direction of the President, was nevertheless sufficient. *Ibid.*

25. The President had, in 1861, power to dismiss from the service an officer of the Marine Corps. *Opinion of Jan.* 8, 1878, 15 Op. 421.

IV. Retired List.

26. A board of officers, duly constituted, was convened by an order of the Secretary of the Navy, dated July 30, 1874, to inquire into and determine whether W., a lieutenant of Marines, was incapacitated for active service. The board found him so incapacitated, and that the cause of his incapacity was not an incident of the service. On submission of the proceedings and finding of the board to the President, he, under date of August 18, 1874, indorsed thereon: "I concur in opinion with the retiring board in the case of W. Let him be retired on furlough pay." *Held* (1) that the action of the President amounted to an approval of the finding of the board, and to a retirement of W. from "active service," within section 1252 Rev. Stat., and that he was retired in conformity with the law applicable to officers of the Marine Corps; (2) that W. thereby became entitled to receive pay according to the rate established by law for retired officers of the Marine Corps (viz, 75 per cent. of the pay of the actual rank held by him at date of retirement), notwithstanding a different rate of pay (viz, furlough pay) was named by the President in retiring him. *Opinion of Jan.* 31, 1878, 15 Op. 443.

MARINE-HOSPITAL TAX.

1. The new rate of taxation upon vessels, for the Marine Hospital, provided by the first and second sections of the act of June 29, 1870, chap. 169, was intended to be laid uniformly from and after August 1, 1870. Accordingly, such rate first accrued on any vessel on the 2d of August, 1870, up to which date the former tax of 10 cents per month is still collectible. *Opinion of Oct.* 7, 1870, 13 Op. 330.

2. Canal-boats are not liable to the tax imposed by that act. *Ibid.*

MARINER.

See SEAMEN.

MARRIAGE.

1. Marriage, so far as its validity in law is concerned, in New York is considered as a civil contract; no formal solemnization by a minister, or any particular officer, being requisite. *Opinion of Aug.* 18, 1837, 3 Op. 287.

2. Consuls of the United States have no lawful authority as such to solemnize marriages in countries comprehended within the pale of the public law of Christendom. *Opinion of Nov.* 4, 1854, 7 Op. 18.

MARSHAL.

See also COMPENSATION, II; FEES AND COSTS.

1. Marshals are not required by law to execute the sentence of a French consul arising under the twelfth article of the convention with His Most Christian Majesty and the United States. *Opinion of March* 6, 1794, 1 Op. 43.

2. The United States may sue a marshal on his bond for misfeasance of himself or deputies. Individuals injured by his official misconduct may use the name of the United States in prosecuting a suit on the bond. *Opinion of Feb.* 4, 1800, 1 Op. 92.

3. Under the act of the 8th of May, 1792, chap. 36, for regulating processes, &c., allowances may be made to marshals for supplying any of the necessaries of life to prisoners. *Opinion of Nov.* 16, 1819, 1 Op. 322.

4. A marshal may bring a suit against the sureties of a defaulting deputy whenever the marshal has become liable to a suit on his bond to the United States by reason of such default. *Opinion of May* 12, 1820, 1 Op. 363.

5. The President advised not to remove the marshal of Ohio on the *ex parte* statements of the complainants, but to inclose the papers to the district attorney of Ohio, with instructions to proceed or not, as the evidence shall direct him. *Letter of Feb.* 23, 1821, 5 Op. 732.

6. The general provisions of the twenty-seventh section of the judicial act of September 24, 1789, chap. 20, confer no authority upon the President to appoint marshals in districts created subsequently to its passage. *Opinion of Aug.* 27, 1829, 2 Op. 253.

7. The practice, in New York, of giving the custody of goods libeled to the marshal is erroneous; the collector is legally entitled to the keeping of the property, after the proceedings are instituted as well as before. *Opinion of Jan.* 7, 1832, 2 Op. 496.

8. Where a marshal, appointed by the President during a recess of the Senate, is subsequently nominated to the Senate for the office and confirmed, and a new commission issued to him, he should execute a new bond to the Government. *Opinion of March* 12, 1832, 2 Op. 500.

9. Marshals are liable to account to the United States for moneys paid to their deputies on execution, even though the return day of the execution may have passed; and defendants in such execution who shall have paid money on the same after the return day are entitled to be credited at the Treasury for such payments. *Opinion of April* 7, 1836, 3 Op. 78.

10. Marshals have no control over the practice of the courts, nor over the kind of process which they may issue; they are simply bound, as officers of the courts, to execute the process issued to them. *Opinion of Feb.* 14, 1840, 3 Op. 497.

11. The district marshal of the United States should obey an injunction issued against him by the superior court of a Territory. *Opinion of July* 16, 1841, 3 Op. 643.

12. The marshal of the district of Georgia, appointed while such district covered the entire State, continued in office after the State was divided as marshal of both districts, and the sureties on his bond remained liable for his acts. *Opinion of May* 8, 1849, 5 Op. 96.

13. Although the marshal of Massachusetts might have been more energetic and active in executing a warrant for the arrest of Crafts, a fugitive slave, no sufficient cause is shown for removing him from office. He and his deputies appear to have acted, to a considerable extent, upon consultation with the agent of the owner of the fugitive, who, at the conclusion of the examination, observed that he had no complaint to make against them. *Opinion of Nov.* 25, 1850, 5 Op. 272.

14. Marshals are entitled to compensation for transporting witnesses in custody, though it be not mentioned in the statute, by analogy of the statute compensation for the transportation of criminals. *Opinion of June* 18, 1853, 6 Op. 58.

15. When combinations exist among the citizens of one of the States to obstruct or defeat the execution of acts of Congress, and the question of the constitutionality of such laws is made in suits against a marshal of the United States, the President is justified in assuming

his defense on behalf of the United States. Hence, a marshal being harassed with suits on account of his official action in the extradition of a fugitive from service, his defense may well be undertaken by the United States. *Opinion of Nov.* 14, 1853, 6 Op. 220.

16. Counsel may be allowed to a marshal of the United States sued for execution of a process of extradition. *Opinion of Nov.* 22, 1853, 8 Op. 444.

17. Where a court of one of the States assumes to take, by *habeas corpus*, out of the hands of a marshal of the United States a person held by him as a fugitive from crime committed in a foreign country, and under reclamation by treaty, the United States may well, by counsel and direction, protect their marshal in the maintenance of the laws and in discharge of public faith toward the reclaiming foreign Government. *Opinion of Dec.* 13, 1853, 6 Op. 227.

18. A marshal of the United States, when called upon to serve due process for the arrest of an alleged fugitive from service, has no absolute right to demand a bond of indemnity as the consideration of making service. *Opinion of Dec.* 16, 1853, 6 Op. 230.

19. Such bond may lawfully be given by the claimant; but if he refuses, and the marshal thereupon refuses to proceed, the latter will be responsible in damages or not according as the proofs may appear of the claimant's right of reclamation of service in the case. *Ibid.*

20. In case where a person, claimed as a fugitive from foreign justice, is under examination before a commissioner of the United States, it is not in the lawful power of a State court to revise the case on *habeas corpus* and assume to overrule the commissioner. *Opinion of Dec.* 20, 1853, 6 Op. 237.

21. It is the right of the marshal of the United States to refuse to have the body of the party before the State court, and it is the duty of the courts and other authorities of the United States to protect the marshal in such refusal by all means known to the laws. *Ibid.*

22. Where a marshal of the United States has in custody a fugitive from foreign justice under warrant of extradition from the proper authorities of the United States, and a State court undertakes to usurp jurisdiction of the case, it is the duty of the marshal, disregarding any process of the State court, to take the party to the exterior line of such State and there deliver him to the agent of the foreign Government. *Opinion of Feb.* 13, 1854, 6 Op. 290.

23. The marshal of the United States for the southern district of Florida cannot at the same time hold the office of commercial agent of France. *Opinion of April* 3, 1854, 6 Op. 409.

24. In case of vexatious suits against marshals of the United States for lawful acts done by them in the extradition of fugitives from service, the President may authorize the employment of counsel in their behalf by the United States. *Opinion of June* 3, 1854, 6 Op. 500.

25. The United States, as a Government, have no responsibility or interest in the question whether a marshal succeeds or not in levying upon or holding property taken to satisfy an execution in a private suit, issued by some district court. *Opinion of July* 17, 1855, 7 Op. 350.

26. In a question of conflict of jurisdiction between a district court of the United States and the supreme court of a State, which question arises on a writ of *habeas corpus ad subjiciendum* issued by the latter to inquire into the legality of the detention of a prisoner by the marshal on the order of the former, it is proper for the Executive of the United States to allow counsel to the marshal, leaving the case otherwise to the regular course of judicial determination, until the question be duly determined by the Supreme Court of the United States. *Opinion of Sept.* 7, 1855, 7 Op. 482.

27. No marshal of a district can be allowed in his accounts for the expenditure of more than $20 for furniture and $50 for rent, unless previously to the expenditure he obtain the approbation of the Secretary of the Interior. *Opinion of Sept.* 25, 1857, 9 Op. 98.

28. The Secretary has no authority to give the approval after the expenditure is made. *Ibid.*

29. The powers of the Secretary in this respect are not enlarged by the law which authorizes an appeal to him from the accounting officers. *Ibid.*

30. A marshal is chargeable with all the fees which accrued to him, whether they were actually collected or not. *Opinion of June* 22, 1858, 9 Op. 176.

31. He may entitle himself to a credit for such of them as he shows that he could not recover by any reasonable effort. *Ibid.*

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MARTIAL LAW.

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on of Feb. 3, 1857, 8 Op. 365.
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e Territories. *Ibid.*

MEXICAN CONTRIBUTION.

In the case of the Mexican contribution fund it is safe to follow the long-continued practice of the War and Treasury Departments relative to extra allowances for services. *Opinion of March* 1, 1861, 10 Op. 8.

MILEAGE.

See also TRAVELING ALLOWANCES.

Territorial attorneys are entitled to the allowance of mileage to and from court, as of right, in all cases of the lawful attendance of any such attorney. *Opinion of Jan.* 3, 1857, 8 Op. 286.

MILITARY ACADEMY.

1. Cadets are soldiers, receiving the pay of sergeants, and bound to perform military duty in such places and on such service as the Commander-in-Chief shall order, and the corps to which they are attached is a part of the military peace establishment. As a part of the Corps of Engineers, they form a part of the land forces of the United States, and have been constitutionally subjected by Congress to the Rules and Articles of War and to trial by court-martial. *Opinion of Aug.* 21, 1819, 1 Op. 276.

2. The regulations of the Military Academy may be altered by the Secretary of War, with the approbation of the President. *Opinion of May* 19, 1821, 1 Op. 469.

3. The professors and cadets at that Academy, as such, are not commissioned officers within the meaning of the sixty-fourth article of the Rules and Articles of War, for the purpose of being detailed as members of a general regimental court-martial; nor can such court be formed of professors for the trial of cadets. *Ibid.*

4. Cadets may be tried by a regimental or garrison court-martial, according to the sixty-sixth and sixty-seventh articles of the Rules and Articles of War. *Ibid.*

5. Cadets are not commissioned officers within the meaning of the sixty-fourth article of the Rules and Articles of War, nor are bre-

vetted graduates officers until an office becomes vacant which they can fill, until which event they remain graduated cadets, privileged, by virtue of their degree and the recommendation of their academical staff, to become commissioned officers. *Opinion of Aug.* 17, 1829, 2 Op. 251.

6. Graduated cadets employed in the office of the Assistant Adjutant-General are doing staff duties, and are entitled to the additional ration allowed by act of March 2, 1827, chap. 42, to the captains and subalterns of the Army. *Opinion of Feb.* 10, 1830, 2 Op. 318.

7. No person has the right to enter the limits of the post at West Point, not even to visit the post-office there, unless specially authorized by the laws of the United States, or by some officer having authority to grant permission. *Opinion of July* 13, 1837, 3 Op. 268.

8. Persons in civil life residing permanently or temporarily at the post, or occasionally resorting to the hotel, may be prevented by the Superintendent of the Academy from interrupting its discipline, or obstructing in any way the performance of the duties assigned by law to the officers and cadets. *Ibid.*

9. The commandant of the post may order from it any person not attached to it by law whose presence is, in his judgment, injurious to the interests of the Academy, and he may be lawfully removed by force. *Ibid.*

10. When, however, the United States have leased a dwelling-house within the post belonging to them to an individual, they have no greater right than an individual would have in respect to ejectment of the lessee. *Ibid.*

11. The professors of the Military Academy and the commandant of the corps of cadets at West Point are entitled to forage, or money in lieu thereof, for only one horse each in time of peace, and that is required to be owned by them respectively, and actually kept in service. *Opinion of July* 17, 1848, 5 Op. 1.

12. The distinction contended for at the Military Academy between academic and military rank is not allowable in the choice of quarters. *Opinion of Sept.* 13, 1852, 5 Op. 627.

13. The cadets of the Military Academy at West Point appertain by law to the Corps of Engineers; they are therefore a part of the land force of the United States, and as such are subject to the Rules and Articles of War. *Opinion of July* 11, 1855, 7 Op. 323.

14. The under graduate cadets are not commissioned officers, and therefore are not competent to sit on a court-martial, and are triable by a regimental or garrison court-martial. *Ibid.*

15. But they are not the "non-commissioned" officers of the acts of Congress and the General Regulations, which expression means "sergeants and corporals," and is inapplicable to the cadets. *Ibid.*

16. They are inchoate officers of the Army and subject by statute and regulation to no discipline incompatible with that character *Ibid.*

17. The under graduate cadets, in their internal academic organization as officers, non commissioned officers, and privates, are no subject to the Articles of War as respects their relation to one another, but only as respects their relation to commissioned officers of the Army on duty as such in the Academy. *Ibid.*

18. The graduated cadets assigned to service as supernumerary officers are brevet second lieutenants, and as such commissioned officers, and therefore subject to all the duties and entitled to exercise all the powers of that grade, including the legal capacity to sit on courts-martial as commissioned officers, and be tried only as such according to the Articles of War. *Ibid.*

19. Assistant professors at the Military Academy are entitled to the "quarters" captains. *Opinion of March* 14, 1859, 9 Op. 28

20. In general, minors whose fathers are l ing and residing within the United Stat are, by reason of their minority, ineligible appointment as cadets to the Military Acade at West Point from any other Congressio districts than those in which their father side. *Opinion of July* 17, 1869, 13 Op. 13

21. An officer of the Army, holding the of a major-general, may be assigned to place of superintendent of the Military A emy. *Opinion of May* 29, 1876, 15 Op. 1

22. Sections 1310 and 1314 of the Re Statutes, in so far as they apply to the tion of a superintendent of the Military emy, considered and construed. *Ibid.*

23. The professorship of the Spani guage in the Military Academy at West being established by statute (section 13 Stat.), cannot be abolished by an Ex order. *Opinion of May* 21, 1878, 16 O

24. In the third section of the act of June 11, 1878, chap. 181, making appropriations for the support of the Military Academy, the word "hereafter" has been changed from "thereafter" by a clerical error. All changes mentioned in such section are referred to the date July 1, 1882. *Opinion of June* 28, 1878, 16 p. 49.

MILITARY COMMISSION.

1. The persons charged with the assassination of the President in the city of Washington, on the 14th of April, 1865, may be lawfully tried before a military tribunal. *Opinion of July*, 1865, 11 Op. 297.

2. A military commission sitting in Washington during the war had no jurisdiction to try a citizen of the United States, not in the military service, for a criminal offense committed in New York. *Opinion of March* 9, 1867, 12 Op. 128.

3. Any moneys or effects taken by an officer or agent of the United States, from a citizen so tried and convicted, in execution of the sentence of such a commission, imposing a fine upon the prisoner, may be restored to him, if they are within the control of the Executive Department of the Government. *Ibid.*

4. It is within the competency of a military commission to try such of the prisoners taken in the Modoc Indian war of 1873 as are chargeable with offenses against the recognized laws and usages of war, and, if found guilty, to subject them to the punishment which those laws and usages warrant. *Opinion of June* 7, 1873, 14 Op. 249.

MILITARY LAW.

See also COURT-MARTIAL; LIMITATION, II.

1. Military punishment cannot be inflicted after 1st June, 1821, on those who do not then constitute a part of the peace establishment under the act of 2d March, 1821, chap. 13. *Opinion of May* 16, 1821, 5 Op. 735.

2. Those who are required to be discharged from the military service by the twelfth section of that act, and are not soldiers on that day, must be citizens, and in this latter character cannot be subject to military law, at least for the completion of a punishment which, in its nature, looks to their restoration to the service when the punishment shall be over. *Ibid.*

3. An officer or soldier of the Army, who does an act criminal both by the military and the general law, is subject to be tried by the latter in preference to the former, under certain conditions and limitations. *Opinion of April* 7, 1854, 6 Op. 413.

4. But his conviction or acquittal, by the civil authorities, of the offense against the general law, does not discharge him from responsibility for the military offense involved in the same facts. *Ibid.*

5. An officer may be tried by court-martial for the military relation of an act, after having been tried by the civil authorities for the civil relations of the same act. *Opinion of June* 5, 1854, 6 Op. 506.

MILITARY SALVAGE.

1. The general English doctrine is, that salvage is not due to a national vessel for service performed in recapturing from the enemy another vessel employed in the public service. *Opinion of Oct.* 24, 1867, 12 Op. 289.

2. The statutes of the United States make no distinction between the recapture by a public armed vessel of the United States, and recapture by a private vessel of the United States; and in case of the recapture of a public vessel by another public vessel, the salvage, costs, and expenses are payable from the Treasury. *Ibid.*

MILITARY STOREKEEPER.

1. Military storekeepers are subject to removal from office at the discretion of the President of the United States. *Opinion of March* 26, 1853, 6 Op. 4.

2. Military storekeepers are all of one grade, and alike subject, as to their place of duty, to the orders of the Secretary of War. *Opinion of March* 27, 1853, 6 Op. 7.

MILITIA AND VOLUNTEERS.

See also ARMY; COMPENSATION, III.

I. *Generally.*
II. *Clothing, Traveling, and other Allowances.*
III. *Arms for Militia.*
IV. *Draft.*

I. Generally.

1. With certain qualifications, it is the duty of officers of the Quartermaster's Department to make disbursements on account of the militia when called into the service of the United States. *Opinion of April* 6, 1835, 2 Op. 711.

2. There are no acts of Congress providing pay, rations, and expenses to militia called out by State or Territorial authority, but disbanded without their having been employed or mustered into the service of the United States previous to their dismissal; such cases, as they have arisen, having been, from time to time, specially provided for. *Opinion of May* 1, 1840, 3 Op. 528.

3. The Government is not bound to pay such of the Florida militia as disbanded voluntarily, and without authority, and refused to render service. *Opinion of Oct.* 30, 1841, 3 Op. 687.

4. Nor is the Government bound to pay such as were mustered and then directed to repair to their homes to remain in readiness to serve at a moment's notice. *Ibid.*

5. The disbanding was a virtual discharge from *actual* service; and, during such discharge, they were not entitled to pay as soldiers of the United States. *Ibid.*

6. The governor of a State has no power to depose an officer or interfere with the organization of the regiment to which he belongs, after such regiment is accepted and mustered into the service of the United States. *Opinion of June* 16, 1862, 10 Op. 279.

7. The tenth section of the act of July 22, 1861, chap. 9, was not referred to, in the previous opinion on the case of Colonel Weir (see 10 Op. 279), for the purpose of pointing out the method by which vacancies in offices in volunteer regiments are to be filled; but merely for the purpose of illustrating the view taken of the point considered in that opinion, viz, the power of governors to depose officers of such regiments in service. *Opinion of June* 23, 1862, 10 Op. 306.

8. The method of their appointment is fixed by the third section of the act of August 6, 1861, chap. 57. *Ibid.*

9. A person of African descent elected and commissioned by the governor of Massachusetts as chaplain of the Fifty-fourth Regiment of Massachusetts Volunteers, and duly mustered and accepted into the service of the United States, is entitled to the full pay provided by law for the chaplain of a volunteer regiment. *Opinion of April* 23, 1864, 11 Op. 37.

10. No provision of law, constitutional or statutory, ever prohibited the acceptance of "persons of African descent" into the military service of the United States as private soldiers, or as commissioned officers, if otherwise qualified to be officers. *Ibid.*

11. The troops known as the "enrolled Missouri militia," though acting from time to time in co-operation with the Army of the United States in the suppression of the rebellion, constituted no part of it, they never having been mustered into the service of the United States. *Opinion of Sept.* 28, 1878, 16 Op. 148.

12. An order disbanding such troops (though entirely creditable to the troops thus disbanded) is not an honorable discharge within the meaning of section 2304 Rev. Stat. *Ibid.*

13. Persons who served with said enrolled militia are therefore not entitled to enter homesteads under the provisions of that section. To entitle them thereto further legislation is necessary. *Ibid.*

II. Clothing, Traveling, and other Allowances.

14. Every volunteer mustered into service under the act of 23d of May, 1836, chap. 80, is entitled at once, and in one payment, to receive, in money, a sum equal to the full cost of the clothing of a non-commissioned officer, or private, as the case may be, in the regular troops of the United States, without reference to the time for which he may be kept in service. *Opinion of Nov.* 3, 1836, 3 Op. 159.

15. And volunteers, whether for six or twelve months, are entitled to the cost of all those articles which are required to clothe a soldier in the Army of the United States on his entrance into service; for a year, if he shall be enlisted for a year, for six months, if that be his term. *Opinion of Nov.* 8, 1836, 3 Op. 159.

16. Where volunteers in the Mexican war were enlisted at Council Bluffs, Iowa, and discharged at Los Angeles, California, the traveling allowance of fifty cents for every twenty miles, provided for in act of 18th June, 1846, chap. 29, must be computed according to the overland, not the Panama route. *Opinion of March* 8, 1852, 5 Op. 516.

17. The Florida mounted volunteers, called into service under a requisition of the President of May 28, 1857, are entitled to an allowance of forty cents per day for the use and risk of their horses. *Opinion of May* 21, 1859, 9 Op. 309.

III. Arms for the Militia.

18. The appropriation of $200,000 made annually, by the act of April 23, 1808, chap. 55, for providing arms and equipments for the whole body of the militia, either by purchase or manufacture, authorizes the use of the money in the manufacture of arms at the national armories. *Opinion of April* 14, 1857, 9 Op. 16.

19. The War Department has the right to supply a deficiency in the allowance of arms to a State, under the act of April 23, 1808, chap. 55, which occurred in consequence of a mistake in estimating the number of the State militia. *Opinion of Nov.* 3, 1859, 9 Op. 395.

20. The laws of Congress upon the subject of arming the militia reviewed and considered with reference to the question, "Whether, under existing laws, the right of property in the arms issued for arming the militia of the United States is vested in the State authorities, with power to dispose of them by sale or otherwise without accounting to the United States;" and *held* that the States do not, by the existing laws, have an absolute right of property in such arms, and they derive no authority therefrom to sell or dispose of them at pleasure. *Opinion of Nov.* 11, 1874, 14 Op. 491.

21. The arms transmitted to the States under those laws (which are embodied in sections 1661, 1667, and 1670 of the Revised Statutes) are, in contemplation of the provisions thereof, to be held by the States for a specific purpose only, which is pointed out therein; hence, they become invested with nothing more than a qualified property in such arms; and they cannot, as a matter of right, and without interfering with the regulations of Congress on a subject over which its authority is paramount, make any disposition or use of such arms which defeats the purpose referred to. *Ibid.*

22. Yet those laws make no provision for any accountability to the United States, respecting the disposition of the arms, after they are once delivered to the State authorities; Congress having seen fit to leave it entirely to the good faith of the States, when the delivery takes place, to carry out the purpose contemplated in furnishing the arms. *Ibid.*

23. The governor of Virginia having made a requisition upon the Chief of Ordnance for a certain number of revolvers, to be drawn as part of the quota of that State, the latter officer gave to an agent of the State an order for the revolvers upon the manufacturer, which the agent, acting under the directions of the governor, assigned to certain parties in New York in part payment for camp-equipage furnished the State, with the understanding that the delivery of the revolvers by the manufacturer should be made directly to them. But the Chief of Ordnance, on being informed of this transaction, directed the delivery by the manufacturer to said parties on the order to be withheld: *Advised* that it was very proper for the Chief of Ordnance to withhold the delivery of the arms to the assignees of the order, as he could not, under the laws mentioned, recognize any right *in them* to the arms; but that the arms cannot be indefinitely withheld from the State, the statute requiring the distribution to be made annually. *Ibid.*

IV. Draft.

24. The Provost Marshal General is not required to change the quotas in a draft ordered after the passage of the act of March 3, 1865, chap. 79, by reason of corrections in the enrollment made since the assignment of the quotas. *Opinion of March* 13, 1865, 11 Op. 161.

25. The twenty-third section of the act of March 3, 1865, chap. 79, does not supersede the fourth section of the act of February 24, 1864, chap. 13. *Opinion of March* 14, 1865, 11 Op. 163.

26. The "recruits," whom enrolled persons may cause to be mustered into service, under the twenty-third section of the act of March 3, 1865, are to be considered as other volunteers

obtained at the expense of the United States. *Ibid.*

27. Rules for determining the "actual residence" of recruits with reference to the execution of the fourteenth section of the act of March 3, 1865, chap. 79, to provide for enrolling and calling out the national forces. *Opinion of March* 15, 1865, 11 Op. 168.

28. The fourteenth section of the act of March 3, 1865, chap. 79, amendatory of the several acts to provide for enrolling and calling out the national forces, is applicable to the call for troops made by the President on December 19, 1864. *Opinion of March* 24, 1865, 11 Op. 177.

29. A substitute liable to draft, and enrolled, must be credited to the place of his actual residence. But if not liable to draft or enrollment, and is not enrolled, he may be credited to the locality in which his principal is drafted. *Opinion of April* 11, 1865, 11 Op. 187.

MINOR.

See ARMY, XVII; NAVY, XII.

MITIGATION OF FINES, PENALTIES, AND FORFEITURES.

See FINES, PENALTIES, AND FORFEITURES.

MONEY-ORDERS.

1. Provisions of the act of June 8, 1872, chap. 335, relating to the issue of money-orders by the Post-Office Department, cited and commented on. *Opinion of Sept.* 25, 1872, 14 Op. 119.

2. *Semble* that Congress designed to give these orders, in some respects, the character of ordinary negotiable instruments, to the end that they might be received with full credit, and their usefulness, in a business point of view, be thus promoted. *Ibid.*

3. The statute does not contemplate that the remitter of the order shall be at liberty to revoke it, and demand back his money, against the will of the payee, after it comes into the possession of the latter; since, to enable the former to obtain a repayment of the funds deposited, he must produce the order. *Ibid.*

4. The payee of the order, upon complying with the requirements of the law and of the regulations of the Post-Office Department, is entitled to payment of the money on demand; and the remitter of the order cannot, previous to its being paid, by any notice that he may give to the office at which it is payable, forbid the payment thereof to the payee.

MONEYS PAID INTO UNITED STATES COURTS.

1. The act of March 24, 1871, chap. 2, does not repeal the laws previously in force relating to moneys paid into the courts of the United States, or received by the officers thereof, which are of a *special* character and apply only to moneys thus paid or received in particular classes of cases, as proceedings in prize and bankruptcy proceedings; it repeals merely the *general* law on the subject, as embodied in the two statutes mentioned in the sixth section. *Opinion of Feb.* 5, 1874, 14 Op. 363.

2. Accordingly, the disposition of moneys paid into the United States courts or received by the officers of such courts, in bankruptcy proceedings, is governed since the act of 1871, as it was prior thereto, by the provisions of the bankruptcy acts and the rules prescribed in pursuance thereof. *Ibid.*

3. *Semble* that there is no law making it the duty of the assistant treasurers, with whom moneys are deposited under the provisions of the act of 1871, to keep a detailed account in respect of the *causes* to which the deposited moneys appertain. *Ibid.*

MUTINY.

Where a portion of the crew of the steamer Edgar Stewart forcibly displaced the master thereof from command, and took possession of the vessel: *Held* that this did not constitute the offense of piracy, but of mutiny; that for the latter offense the parties charged are liable to be tried and punished under the laws of the United States; and that they may be tried therefor in any district in which they are first brought. *Opinion of May* 2, 1872, 14 Op. 569.

TIONAL ASYLUM FOR DISABLED VOLUNTEERS.

e requisition of the Secretary of War on Secretary of the Treasury for the fund ppriated by Congress to the "National um for Disabled Volunteer Soldiers" d be in favor of the president of the inion. *Opinion of Jan.* 16, 1867, 12 Op.

TIONAL BANKING ASSOCIATIONS.

See also INTERNAL REVENUE, I, IV.

National banking associations, employed r the fifty-fourth section of the national ncy act of Feb. 25, 1863, chap. 58, are blic depositaries" within the meaning of act of March 3, 1857, chap. 114, and dising officers may avail themselves of such ciations, except for the deposit of receipts ustoms. *Opinion of March* 19, 1864, 11 Op.

The provisions of the national currency of June 3, 1864, chap. 106, and the amendy act of March 3, 1865, chap. 78, authorize creation of banking associations without right to obtain, issue, and circulate notes. *ion of Sept.* 4, 1865, 11 Op. 334.

These acts, while limiting the aggregate unt of bank-note circulation authorized eby, place no restriction, either expressly nplicdly, upon the aggregate amount of apital of banks which may be organized under. *Ibid.*

A national bank is not liable under the nal-revenue laws to the tax of 5 per um upon the dividends due a State on owned by the State. *Opinion of May* 8, , 12 Op. 402.

The Treasurer of the United States can retain, as security for a claim due the ed States, the bonds deposited with him national bank, under section 16 of the act une 3, 1864, chap. 106, to secure its circun. *Opinion of Jan.* 28, 1869, 12 Op. 549.

It is not within the power of a State legure to alter, modify, add to, or diminish powers, duties, or liabilities created in or erred upon banking associations established under a law of the United States. *Opinion of May* 15, 1869, 13 Op. 56.

7. Such associations cannot be merged or in any manner identified with similar corporations created by State legislation, without the authority of Congress. *Ibid.*

8. The dissolution of a national banking association is not complete until the necessary action has been had for the redemption of its circulating notes, either by actually redeeming them and surrendering them to the Comptroller of the Currency, or by depositing an amount of Treasury notes with him adequate to their redemption. *Ibid.*

9. The obligations, duties, and liabilities of such association, before the completion of the acts necessary to its dissolution, stated. *Ibid.*

10. The remedies given by the national banking law for a violation of its provisions may be pursued by the Comptroller of the Currency. *Ibid.*

11. The United States have no priority over private creditors in the assets of an insolvent national bank for payment of deposits made in such bank to the respective credit of the United States Treasurer, of a United States disbursing-officer, and of the registry of a United States district court, after the fund which may be realized from the bonds held by the United States as a security for such deposits is exhausted. *Opinion of Sept.* 9, 1871, 13 Op. 528.

12. Provisions of the acts of March 3, 1865, chap. 82; July 12, 1870, chap. 252; and June 20, 1874, chap. 343, examined and considered with reference to the power and duty of the Comptroller of the Currency concerning the distribution of circulating notes authorized by the national banking laws. *Opinion of July* 15, 1874, 14 Op. 415.

13. The Comptroller may, consistently with the last-mentioned act, distribute under the act of 1865 such portion as remains unissued of the $300,000,000 authorized by the national bank act of June 3, 1864, chap. 106, and under the act of 1870 such portion of the $54,000,000 authorized thereby as remains unissued. *Ibid.*

14. In the distribution of the $55,000,000, for which provision is made by the act of 1874, it is the duty of the Comptroller, upon applications duly made, to satisfy the same with reasonable expedition, even to the extent of giving to a State its full apportionment; but

of several applications made about the same time, if some are from a State or Territory where the deficiency is relatively great, and others from a State or Territory where it is relatively small, preference should be given to the former in case the supply is not sufficient for all. *Ibid.*

15. The means of supplying the said $55,000,000 provided by the act of 1874 is by requisitions upon the national banks in States having an excess of circulation; and the Comptroller can resort to no other sources of supply. *Ibid.*

16. National banks with a capital of $50,000 may (notwithstanding the *proviso* in the fourth section of the act of June 20, 1874, chap. 343) still be organized, as heretofore, upon a deposit of $30,000 in bonds, and those with a capital of not less than $150,000 upon a deposit of one-third of their capital stock in bonds. *Ibid.*

17. In the distribution of the $55,000,000 of national-bank notes, as provided for by the act of June 20, 1874, chap. 343, the Comptroller of the Currency must rely on requisitions for the withdrawal and redemption of their notes by banks in States where there is an excess of circulation; this is his only resource under that act. Opinion on same subject, given July 15, 1874, reaffirmed. *Opinion of Sept.* 26, 1874, 14 Op. 456.

18. The German-American Savings Bank of Washington, D. C., incorporated under a law of Congress relating to the District of Columbia, and having a capital of $126,000, is, by virtue of section six of the act of June 30, 1876, chap. 156, required to keep on hand (under section 5191 Rev. Stat.) a reserve of 25 per cent. of its deposits, and is entitled (under sections 5157–5189 Rev. Stat.) to receive circulating notes. *Opinion of Feb.* 5, 1877, 15 Op. 606.

19. The Secretary of the Treasury has authority, under section 5153 Rev. Stat., to receive from national banking associations designated as depositaries of public money Treasury notes of the United States as security for the safe keeping and prompt payment of the public money deposited with them and for the faithful performance of their duties as financial agents of the Government. *Opinion of July* 18, 1878, 16 Op. 96.

20. The provision in section 4 of the act of June 30, 1874, chap. 343, viz, "That the amount of the bonds on deposit for circulation shall not be reduced below $50,000," is for all purposes connected therewith repugnant to the previous statutory provision (secs. 5159 and 5160 Rev. Stat.) requiring national banks to have and maintain with the Treasurer of the United States a bond deposit to the amount of one-third of their capital stock, and so far in effect does away with such provision. Purpose of said act of June 30, 1874, explained. *Opinion of April* 30, 1880, 16 Op. 663.

NATIONAL BOARD OF HEALTH.

1. The National Board of Health can properly pay, from funds under its control, for tents furnished by the War Department as a matter of urgent necessity to the camp which was established at Memphis, Tenn., to prevent the spread of yellow fever to other States. *Opinion of Aug.* 26, 1879, 16 Op. 379.

2. That board has no power to aid in suppressing yellow fever, except so far as is required to prevent it from being imported into the United States, or from one State into another. *Ibid.*

NATIONAL CEMETERY.

See LANDS ACQUIRED FOR PUBLIC USES.

NATIONALITY.

See CITIZENSHIP; EXPATRIATION.

NATIONAL MILITARY AND NAVAL ASYLUM.

The charter of the National Military and Naval Asylum requires that a majority of the persons named therein shall accept the same, and such acceptance and organization of the company cannot be by proxies. *Opinion of June* 26, 1865, 11 Op. 261.

NAVAL ACADEMY.

1. Under the act of August 31, 1852, chap. 109, a member of Congress has no power to

appoint a midshipman; the act only makes the recommendation of a member of Congress a pre-requisite to appointment. *Opinion of June* 5, 1861, 10 Op. 46.

2. The Secretary of the Navy has power to appoint as midshipman any one who stands recommended by a member of Congress, who was, at the time he recommended, representing the district in which the applicant resides; and if more than one be so recommended, the Secretary has a right to choose among them. *Ibid.*

3. The authority to appoint ten acting midshipmen granted to the President by the act of July 14, 1862, chap. 164, is not repealed by the 11th section of the act of July 16, 1862, chap. 183. *Opinion of July* 29, 1862, 10 Op. 315.

4. Midshipmen cannot lawfully be appointed for a district which is not represented in Congress. *Ibid.*

5 The President has no authority, under the act of July 16, 1862, to appoint two midshipmen for the District of Columbia, in addition to the two from that District appointed under previous law or usage. *Ibid.*

6. The opinion of the Attorney-General on the subject of the appointment of midshipmen from unrepresented Congressional districts, dated July 29, 1862 (10 Op. 315), reconsidered and modified. *Opinion of July* 5, 1863, 10 Op. 494.

7. The eleventh section of the act of July 16, 1862, chap. 183, "to establish and equalize the grade of line officers of the Navy," providing for the appointment of students at the Naval Academy, is a complete substitute for prior enactments on the same subject. *Ibid.*

8. Under the eleventh section of the act of July 16, 1862, the Secretary of the Navy has the power, and it is his duty, to fill vacancies in the Naval Academy that may exist from any district, when it is clearly impracticable to obtain the recommendation of the Member or Delegate in Congress from that district. *Ibid.*

9. Under section 11 of the act of July 16, 1862, chap. 183, students or midshipmen at the Naval Academy are not entitled to be commissioned ensigns until they have performed the term of duty on ship-board prescribed by regulation of the Department, upon the completion of their academic studies, and passed their final examination on practical navigation and seamanship. *Opinion of March* 8, 1865, 11 Op. 158.

10. The act of June 23, 1874, chap. 453, to prevent hazing at the Naval Academy, was designed to cut off from a cadet found guilty of the offense, should the finding of the court-martial be approved by the superintendent, all chance of reinstatement or reappointment. *Opinion of March* 15, 1876, 15 Op. 80.

11. The provisions of article 36 of the Articles for the Government of the Navy (sec. 1024 Rev. Stat.) do not extend to cadets at the Naval Academy. They may accordingly be dismissed from the Academy and from the naval service for misconduct without trial by court-martial. *Opinion of July* 10, 1877, 15 Op. 635.

12. Sections 1519 and 1525 Rev. Stat. leave no right to the Secretary of the Navy to continue at the Academy cadets who have been found at any examination deficient in their studies without the recommendation of the academic board. *Ibid.*

13. The words "final graduating examination," in section 11 of the act of July 16, 1862, chap. 183, and "graduating examination," in section 12 of the act of July 15, 1870, chap. 295, signify that examination which, under the regulations of the Naval Academy, takes place after the prescribed term of sea-service has been performed. *Opinion of Aug.* 7, 1877, 15 Op. 637.

14. Assignments of relative rank, as between members of the same class, based upon the results of such examination, are in conformity with law. *Ibid.*

15. On March 6, 1878, a Representative in Congress was informed by the Navy Department of a vacant cadetship in the Naval Academy, which was to be filled by an appointment from his district. He recommended a candidate for admission, who failed to pass the examination held in June, 1878; he thereupon recommended another candidate, who failed to pass the examination held in September, 1878. The times fixed by the regulations of the Academy for the examination of candidates for admission are June 11, and September 22 of each year: *Held* that the next recommendation of a candidate for admission to fill the said vacancy should not be made until after March 5, 1879. *Opinion of Jan.* 18, 1879, 16 Op. 622.

16. Section 1515 Rev. Stat. is to be read as

if the dates fixed by the regulations of the Academy for the examination of candidates for admission were inserted therein; and hence, by the existing law, the season for recommendations and nominations of cadet-midshipmen begins after the 5th of March and expires on the 22d of September in each year. *Ibid.*

17. Opinion of August 7, 1877 (15 Op. 637), in the cases of Ensign Qualtrough, Master Turner, and others of the Navy—involving the question of relative rank among graduates of the Naval Academy as between members of the same class—reaffirmed. And *advised* that the construction given to the act of July 15, 1870, chap. 295, at the Naval Academy—viz, that midshipmen, although graduates, were nevertheless not entirely emancipated from probationary study, but that, after graduation, they were still (as theretofore) to be students at sea, and that while so students at sea a provisional relative rank was assigned them by the statute, but it was not intended by such legislation to abolish the old discipline by which a final graduating examination was to have effect upon the relative rank which they should have after emancipation—be not disturbed. *Opinion of March* 31, 1879, 16 Op. 296

NAVAL-PENSION FUND.

1. Certain moneys having been paid into the Treasury to the credit of the naval-pension fund in pursuance of a final decree of a district court of the United States, and being thus no longer subject to the jurisdiction and control of the court: *Advised* that a subsequent decree of the court, directing a distribution of the same moneys as military salvage, should not be respected. *Opinion of Aug.* 1, 1870, 13 Op. 299.

2. Opinion of August 1, 1870 (13 Op. 299), reconsidered upon additional matter submitted, and the conclusions arrived at in that opinion re-affirmed. *Opinion of Dec.* 6, 1870, 13 Op. 348.

NAVIGABLE WATERS.

See COMMERCE AND NAVIGATION, VIII, IX; LAKES; LANDS UNDER NAVIGABLE WATERS; RIVERS AND HARBORS.

NAVIGATION.

See COMMERCE AND NAVIGATION,

NAVY.

See also COMPENSATION, IV

I. *Generally.*
II. *Appointment and Promotion.*
III. *Relative Rank.*
IV. *Transfer of Officer.*
V. *Sea Service.*
VI. *Allowances to Officers.*
VII. *Dismissal from the Service.*
VIII. *Examining Board.—Efficien*
IX. *Retired-List.*
X. *Pay Corps.*
XI. *Civil Engineers.*
XII. *Enlistment.*
XIII. *Regulations.*

I. Generally.

1 Boatswains, gunners, carpenter makers were intended to be includ resolutions of Congress of 6th Janu *Opinion of Aug.* 27, 1817, 1 Op. 195.

2. Although there is no act of Co thorizing a call by a governor for the of a midshipman charged with a bre peace of a State, nor any law auth arrest by the Executive with a view ble surrender of him for the purpos it is important that the accused shoul *himself* for that purpose; to which advised that an order from the Nav ment be given him. *Opinion of Oct* 1 Op. 244.

3. The numbering of naval commis the act of the President and Senate, Secretary of the Navy, to prevent q rank from arising among officers hol missions of the same date. *Opini* 24, 1819, 1 Op. 325.

4. Whenever a change of the nu commission is proposed, the perso thereby ought to be heard as to *Ibid.*

5. A furlough granted to a sailo "on condition that he should relinq that date his pay and emoluments

officer, until further orders," must be considered as an absolute furlough; the condition being void in law. *Opinion of Jan.* 22, 1823, 1 Op. 592.

6. The members of the Board of Commissioners of the Navy are still officers of the Navy not below the rank of post-captains; and they are, whilst members of the Board, entitled to all the honors, privileges, and powers of that rank, and subject to all the duties of it, except such duties as are inconsistent with their services on the Board. *Opinion of July* 8, 1823, 5 Op. 761.

7. A surgeon in the Navy who resigned in 1824, and was re-appointed in April, 1827, and has continued since to hold that office, is entitled to all the benefits to be derived from the act of January 21, 1829, chap. 7, amendatory of the act of May 24, 1828, chap. 121. The terms of the former act are sufficiently comprehensive to embrace his case. *Opinion of Oct.* 10, 1829, 2 Op. 273.

8. Where Congress fails to provide for disbursements indispensable to the performance of the naval service, the President may make allowances to officers acting in higher stations than those to which they were appointed by their warrants or commissions. *Opinion of Oct.* 24, 1829, 2 Op. 284.

9. Public debtors in the naval service of the United States are entitled to receive the rations allowed them by law, or the amount in money for which they may be commuted, notwithstanding the act of 25th January, 1828, chap. 2. *Opinion of March* 22, 1831, 2 Op. 420.

10. Members of the Board of Navy Commissioners, while they act as such, retain their rank of post-captains in the Navy; and may, while they continue members of the Board, be employed by the Government in separate and distinct duties, in their character of post-captains. *Opinion of March* 22, 1832, 2 Op. 503.

11. As no separate command is assigned to the several members of the Board in their character of post-captains, they cannot exercise the authority which an officer of that rank possesses over the officers and men placed under his command when in actual service and afloat. They are entitled to the rights and privileges that belong to an officer of the same grade when on shore and not employed in any particular professional service; and as post-captains they are entitled to nothing more. *Ibid.*

12. The members of the Board of Navy Commissioners having been provided with salaries, in lieu of rations, and not having hitherto received rations, a tacit construction against the right to rations has been given by the Department. *Opinion of March* 22, 1833, 2 Op. 558.

13. The thirteenth article of the act of April 23, 1800, chap. 33, "for the better government of the Navy," refers only to officers commanding. *Opinion of March* 30, 1838, 3 Op. 321.

14. Pursers are liable upon their bonds for public stores committed to their charge, even though such stores are destroyed by inevitable accident. *Opinion of Feb.* 11, 1845, 4 Op. 355.

15. Commanders of public vessels employed in the public service, whether armed or not, are not required to employ and pay branch pilots upon entering the ports and harbors of the United States. *Opinion of Sept.* 9, 1846, 4 Op. 532.

16. An officer of the Navy in command, who requires the purser to pay him more money than is due to him, and fails to account, is not guilty of embezzlement under any existing act of Congress. *Opinion of April* 6, 1855, 7 Op. 82.

17. When the rate of a ship has been fixed by statute it cannot be changed by an order of the Navy Department, in so far as to affect the compensation of an officer of the Navy. *Opinion of March* 3, 1857, 8 Op. 503.

18. The act of March 2, 1855, chap. 136, establishing summary courts-martial in the Navy, does not interfere with the power of the commander of a vessel, as it existed prior to the passage of that act, to reduce seamen to inferior rate for incompetency. *Opinion of Jan.* 16, 1862, 10 Op. 168.

19. Under the act of June 1, 1860, chap. 67, the pay allowed to a naval officer "on duty at sea" begins when, having been ordered to a particular duty, he reports himself at the place designated and enters on that duty. Whether the duty be at once on ship-board or on land, in necessary and immediate preparation for the intended cruise, will depend on the circumstances of each case, of which the Navy Department will judge. *Opinion of Feb.* 19, 1862, 10 Op. 191.

20. An acting master's mate is not a warrant officer of the Navy. *Opinion of June* 20, 1865, 11 Op. 251.

21. By act of July 15, 1870, chap. 295, the allowance of funeral expenses of a naval officer who died in the United States is prohibited; but such expenses are allowable where the officer died in a foreign country, to an amount not exceeding his sea pay for one month. *Opinion of Nov.* 17, 1870, 13 Op. 341.

22. The fact that the officer had started on a foreign service, but died in a port of the United States at which his vessel had touched, does not relieve the case from the prohibition of the statute. *Ibid.*

23. The Secretary of the Navy cannot exchange a vessel belonging to the Navy, which has been condemned as unfit for naval purposes, for another vessel, notwithstanding the exchange might be of advantage to the public service. The disposition of such vessel is controlled by the second section of the act of May 23, 1872, chap. 195. *Opinion of Feb.* 18, 1874, 14 Op. 369.

24. Civil engineers, appointed under section 1413 Rev. Stat., are officers of the Navy within the meaning of articles 36 and 37 of section 1624 Rev. Stat. *Opinion of Sept.* 5, 1876, 15 Op. 165.

25. The penalties imposed by State laws for piloting vessels without due license from the State have no application to persons employed as pilots on board of the public vessels of the United States, the latter vessels being within the exclusive jurisdiction of the United States. *Opinion of Oct.* 22, 1879, 16 Op. 647.

II. Appointment and Promotion.

26. Where one was a lieutenant in the Navy prior to 1837, and afterwards resigned, but was again nominated to the Senate by President Jackson for the same office from the 16th of February of that year, and confirmed by the Senate, with the condition that he should take rank next after Lieutenant Peck, and for whom a commission was made out at the Navy Department, but never signed by President Jackson; and who was, thereupon, again nominated to the same office by President Van Buren on the 7th of March, 1837, to take rank from the said 16th of February, 1837, but not confirmed; and who was again nominated by President Tyler on the 14th of December, 1841, "to be a lieutenant from the 28th April, 1826, to take rank next after Lieutenant Peck," but was rejected by the Senate: *Held* that he was not a lieutenant within the Constitution and the laws. *Opinion of Aug.* 9, 1843, 4 Op. 218.

27. Even after the confirmation by the Senate, the President may, in his discretion, withhold a commission from the applicant; and, until a commission to signify that the purpose of the President has not been changed, the appointment is not fully consummated. *Ibid.*

28. Since the passage of the act of the 4th August, 1842, chap. 121, the President has no power to appoint a midshipman until the number in the service shall be reduced to the number that were in service on the 1st of January, 1841. *Opinion of Jan.* 23, 1844, 4 Op. 306.

29. An officer out of the Navy cannot be brought again into it except by appointment. *Ibid.*

30. A purser in the Navy, appointed during a recess of the Senate, and his nomination sent to the Senate at the commencement of the next session thereof, having continued to hold his office under the appointment until the close of such session, was legally in office on the first day of January intervening, and is so to be regarded under the provisions of the act of the 4th of August, 1842, chap. 121. A nomination to supply any deficiency existing in point of numbers, as fixed by said act, may now be made in respect to that particular grade of officers. *Opinion of April* 23, 1844, 4 Op. 321.

31. The act of June 17, 1844, chap. 107, which authorizes the construction of a dry-dock at Brooklyn, containing no provision for the appointment of purchasing and disbursing agents, the authority to appoint them rests on the act of March 3, 1809, chap. 28, permitting the President, during the recess of the Senate, to appoint such temporary agents as may be needed. *Opinion of Feb.* 8, 1845, 4 Op. 354.

32. But agents for the purchase and disbursement of supplies for the dry-dock at Brooklyn must be regarded, in contemplation of law, as permanent officers, to whose nomination the sanction of the Senate is necessary at its session next after the making of a temporary appointment. *Ibid.*

33. The commander of a squadron of the Navy on a foreign station has power to appoint a provisional or acting purser in the absence

ıer of the Navy duly appointed by
ent. *Opinion of March* 12, 1854, 6

ough such appointment be subse-
sapproved by the Secretary of the
the acts which the acting purser
performed while so acting are not
validated. *Ibid.*

er the seventh section of the act of
862, chap. 164, prescribing the age
ıs in the Navy, the President cannot
person to that office above the age of
although, before the passage of that
esident instructed the Secretary of
o prepare a nomination of that per-
Senate for the office. *Opinion of*
362, 10 Op. 324.

ble that Congress did not intend, by
on in section 11 of the act of July
hap. 183, to forbid the re-appoint-
ı officer, dismissed by sentence of a
ial, to whom the President has ex-
don. *Opinion of March* 12, 1864, 11

acceptance of a promotion is not
o consummate the appointment of
in the naval service to a higher
pinion of Aug. 1, 1867, 12 Op. 229.

President, by and with the advice
ıt of the Senate, has power to ad-
aval officer, in his own grade, not
thirty numbers, for distinguished
ı battle or extraordinary heroism.
March 11, 1869, 13 Op. 1.

her the provisions of the act of July
hap. 231, nor those of the act of
1867, chap. 174, afford any ground
ıim that the officers selected from
eer naval service for appointment
ular Navy, under the former act,
commissioned as of the date of that
e rank in the regular Navy from the
of. *Opinion of March* 3, 1873, 14

ere a fictitious date in an officer's
n would be attended with prejudice
ficers in the same grade, it must be
ıproper to thus date the commission,
re is clear authority of law for so
bid.

words in section 1505 Rev. Stat.,
shall be suspended from promotion
ar, with corresponding loss of date,"
do not mean that the loss of date is to be *contemporaneous* with the term of suspension, but only that it shall agree therewith in point of duration. *Opinion of Dec.* 10, 1880, 16 Op. 588.

42. Accordingly, where A., a lieutenant in the Navy, being the senior officer of his grade, became entitled to examination for promotion to fill a vacancy in the next higher grade (lieutenant-commander), which occurred January 22, 1880, and afterwards, upon examination, failed to pass, and the findings of the examining boards were approved February 6, 1880, by the President, who directed that he "be suspended from promotion for one year, with corresponding loss of date": *Held* that the loss of date of A. is one year, to be reckoned from the occurrence of the vacancy, January 22, 1880, the date from which he would have taken rank as lieutenant-commander had he been found qualified for promotion, and that his year of suspension is to be reckoned from the approval of the President of the findings of the examining boards, February 6, 1880. *Ibid.*

43. In the above case, as A., by reason of his suspension, is ineligible for promotion during the whole of the year commencing February 6, 1880, no vacancy should be kept open for him until February 6, 1881. Such vacancies as happen to exist during that period, the officers who are then eligible for promotion are entitled to fill. But as his loss of date is only to be one year from January 22, 1880, if, on his second examination, he shall be found qualified to fill a vacancy in the next higher grade which occurred after the period of his suspension, he will be entitled, upon promotion thereto, to take rank in such grade as of the date of January 22, 1881. He will not, however, be entitled to the pay of the higher grade from the ranking date in his commission. *Ibid.*

III. Relative Rank.

44. The Executive has no power, without express authority of law, to fix the relative rank of the line and staff officers of the Navy. *Opinion of Dec.* 24, 1862, 10 Op. 413.

45 The fifth section of the act of July 14, 1862, chap. 164, recognizing the orders of the Secretary of the Navy theretofore issued as the regulations of the Navy Department and

authorizing alterations of such regulations, confers on the Secretary of the Navy, with the approbation of the President, power to alter any orders, issued by him before the passage of the act, fixing the relative rank of the line and staff officers of the Navy. *Ibid.*

46. The regulations adopted by the Secretary of the Navy, with the approbation of the President, on March 13, 1863, concerning the relative rank of the staff officers of the Navy, in so far as they are alterations of the orders of the Secretary of the Navy, to which legislative sanction was given by the acts of August 5, 1854, chap. 268, sec. 4, and March 3, 1859, chap. 76, sec. 2, are not founded upon valid authority of law. *Opinion of March* 31, 1869, 13 Op. 10.

47. Those orders are not properly within the provision of the fifth section of the act of July 14, 1862, chap. 164, from which was drawn the supposed authority to alter or modify them, and establish new and different regulations on the subject to which they relate. The opinion of Attorney-General Bates (10 Op. 413) dissented from. *Ibid.*

48. In estimating length of service, for the determination of precedence with other officers with whom they have relative rank, engineer officers of the Navy who are graduates of the Naval Academy are not entitled to the six years' constructive service allowed to other staff officers of the Navy for that purpose. Section 1484 Rev. Stat. is to be construed as an exception to section 1486 Rev. Stat., operating to exclude from the provisions of this last section such engineer officers. *Opinion of July* 11, 1877, 15 Op. 336.

49. But engineer officers not graduated at the Naval Academy stand on the same footing with other staff officers, and are entitled to the six years' constructive service. *Ibid.*

IV. Transfer of Officer.

50. On February 4, 1863, Z. was appointed a chief engineer in the volunteer naval service. In June, 1868, he was transferred to the same grade in the regular Navy, upon nomination by the President and confirmation by the Senate, as a chief engineer therein, his commission bearing date the 18th of that month. Subsequently he applied to the Navy Department for a new commission, giving him rank in the regular Navy from February 4, 1863 (claiming to be entitled thereto under the provisions of section 3 of the act of March 2, 1867, chap. 174), and a new commission giving him rank from that date was transmitted to him on the 23d of January, 1877: *Held* that section 3 of the act of March 2, 1867, did not entitle Z., on his transfer to the regular Navy, to hold a commission as of the date of his appointment in the volunteer naval service; that the commission transmitted to him January, 1877, was improvidently issued; and that his place on the Naval Register must be determined according to the rank given him by the commission which was issued upon his nomination to and confirmation by the Senate, namely, the commission dated June 18, 1868. *Opinion of June* 12, 1878, 16 Op. 45.

51. The interpretation placed upon section 3 of the act of March 2, 1867, by Attorney-General Williams, in 14 Op. 192, 358—viz, that it was designed to give the transferred officers the full benefit of their former sea-service, in so far as it might go to complete the period of such service required in their respective grades previous to nomination for promotion, and in so far as it ought properly to be taken into account in the matter of assignment to duty, and that it conferred no advantages beyond these—approved and adopted. *Ibid.*

V. Sea Service.

52. The seventeenth section of the act of July 16, 1862, chap. 183, is retroactive only in so far as that the computation of sea-service is to be made from the date of the appointment or entry into the service, although the appointment or entry occurred before the act was passed. *Opinion of Aug.* 28, 1862, 10 Op. 326.

53. The construction given by the Navy Department to the third section of the act of March 2, 1867, chap. 174, "to amend certain acts in relation to the Navy," which requires officers transferred from the volunteer to the regular Navy to be credited with their previous sea-service, concurred in, namely, that to entitle an officer to credit for sea-service thereunder he must have been in the volunteer Navy at the time of his appointment to the regular Navy, and that where he had ceased to be an officer in the volunteer Navy prior to such appointment, however brief the interval,

s does not come within the provision referred . *Opinion of Nov.* 20, 1872, 14 Op. 142.

54. Effect of the said act of March 2, 1867, lative to crediting the officers selected and ppointed from the volunteer naval service, ith the sea-service performed by them while lunteer officers, considered. *Opinion of arch* 3, 1873, 14 Op. 192.

55. The provision in the 3d section of the t of March 2, 1867, chap. 174, declaring that ansferred officers from the volunteer to the gular naval service, by whom sea-service has en performed as volunteers, "shall receive l the benefits of such duty in the same man- r as if they had been, during said service, the regular Navy," is to be understood to ean that they shall receive whatever benefits eir past sea-duty would entitle them to if, ring the period of its performance, they had longed to the regular naval service, holding ot the same grades as those to which they e transferred, but) grades corresponding to ose at that period held by them in the vol- nteer naval service. Intention of that pro- ision explained. *Opinion of Jan.* 24, 1874, 4 Op. 358.

VI. Allowances to Officers.

56. The commanding officer at the navy- ard is entitled to the pay and emoluments of commodore, and therefore a house or apart- ments should be furnished him free of rent. *Opinion of June* 10, 1807, 1 Op. 160.

VII. Dismissal from the Service.

57. In October, 1861, S. was appointed by he Secretary of the Navy "an acting master n the Navy, on temporary service," and was lismissed from the service by the Secretary in March, 1862: *Held* that the dismissal was awful; that in the absence of legislation the Secretary had power to determine the time at which an appointment expressly temporary should come to an end. *Opinion of April* 25, 1876, 15 Op. 560.

58. In January, 1864, S. was appointed by the Secretary of the Navy "an acting gunner on temporary service" in the volunteer Navy, and in July, 1865, was dismissed from the service by the Secretary: *Held* that a power to appoint gunners to an undefined ex- tent does not preclude the appointment of act- ing gunners also; that the power to appoint the latter is implied by section 18, act of July 17, 1862, chap. 204 (Rev. Stat., sec. 1410), and that as an acting gunner S. was liable to dismissal at the will of the Secretary. *Opin- ion of June* 10, 1876, 15 Op. 564.

VIII. Examining Board.—Efficiency Acts.

59. Under the act of Feb. 28, 1855, chap. 127, for promoting the efficiency of the Navy, which provides for a board, consisting of five captains, five commanders, and five lieuten- ants, to examine into the competency of the officers of the Navy, and which further pro- vides that no officer on said board shall exam- ine into or report upon the efficiency of officers of a grade above them, the effect is to exclude any of such officers of the board from being present at the deliberations concerning officers their superior in grade. *Opinion of June* 16, 1855, 7 Op. 282.

60. It was not the duty of the board, ap- pointed in execution of the Navy efficiency act of Feb. 28, 1855, chap. 127, nor had it power by law to proceed with notice to the parties, hearing of evidence, and other inci- dents of judicial inquiry; its only function being that of executive recommendation to the President. *Opinion of Dec.* 10, 1856, 8 Op. 223.

61. It was competent for the Secretary of the Navy to instruct the board to look into questions of moral as distinguished from phys- ical or mental incapability or incompetency to perform promptly and efficiently all the possi- ble duties of an officer of the Navy. *Ibid.*

62. The language of the statute implies one act of the board as report, and one act of the President as approval—not a separate report in each case, nor separate reconsideration of each by the President. *Ibid.*

63. Officers of the Navy furloughed under authority of pre-existing law retain their place in the line of promotion, and can be re- stored to active service by Executive order; but officers reserved under the efficiency act drop out of the line of promotion, and can be restored only by renomination to the Senate. *Ibid.*

64. The act of January 16, 1857, chap. 12, to amend the act of February 28, 1855, chap. 127, is supplemental to the latter, recognizing its consequences as consummated legal facts, and providing for their continuation in form and

substance, with provision for the re-examination of cases by court of inquiry, and the contingency of consequent restoration to rank or position. *Opinion of Jan.* 31, 1857, 8 Op. 337.

65. The constitution and the course of proceeding of the court of inquiry, provided for by the supplemental act, are to be governed by the general statutes, and by the common law military as received and practiced in the Army and Navy. *Ibid.*

66. The President, in the execution of this law, may appoint one court of inquiry, or a plurality of courts, in his discretion. *Ibid.*

67. The act, in requiring investigation of the fitness for the naval service, physical, mental, professional, and moral, of officers displaced by the previous act, is coextensive with the latter in scope, and corresponds in this respect with the pre-existing statute rules for the government of the Navy. *Ibid.*

68. The court of inquiry takes jurisdiction of each case only in virtue of an order of the Secretary of the Navy founded on written request of an officer, which officer occupies the position of actor before the court, affirming his fitness for reappointment by the President. *Ibid.*

69. The same court may proceed to investigate any number of cases, if so ordered, but it must be sworn separately on each case and make report thereon separately to the Executive. *Ibid.*

70. Investigation of the fitness of persons, physical, mental, professional, and moral, for commissions in the Army and Navy, is the ordinary fact in the military service of the United States, the only legal innovation here being the substitution of a court of inquiry in the place of a board of officers or other executive agents of investigation. *Ibid.*

71. The authority of the court of inquiry on the general question of fitness, in either of its branches, comprehends personal observation, inspection or examination of the party, evidence of specific facts, and professional opinions on the whole case or any of its material constituent parts. *Ibid.*

72. Proof of specific facts of imputed immorality, as also proof negativing the imputation of any such specific fact, must be of specific nature, not mere opinion and reputation. *Ibid.*

73. But opinions are admissible on the general question of naval fitness in all its elements, including testimony of particular facts illustrative of character and reputation. *Ibid.*

74. Witnesses in such a case, expressing opinions or testifying to reputation or estimation of character, on whichever side they testify, may be cross-examined. *Ibid.*

75. Official letters on file contemporaneous with or a part of the incidents to which they relate are competent evidence, both for and against a party, as are official letters which he may have received at the termination of a particular service, the same being, however, subject to explanations. *Ibid.*

76. Neither letters of recommendation nor of condemnation, nor certificates prepared for the occasion, nor even *ex parte* affidavits, are competent evidence. *Ibid.*

77. The court has discretion, subject to fixed rules of law, as to motions of delay for obtaining the attendance of witnesses. *Ibid.*

78. The act of Congress, in constituting the court of inquiry, impliedly suggests the suspension of other modes of relieving displaced officers by the mere act and initiation of the President. *Ibid.*

79. The President has power to review the action and finding of a board of naval surgeons constituted under the 4th section of the act of April 21, 1864, chap. 63. *Opinion of Dec.* 30, 1867, 12 Op. 347.

80. A naval officer having appeared before an examining board (organized and conducted under sections 1493 to 1505 Rev. Stat.), and the examination being temporarily suspended, was granted permission to go home and to be absent until notified by the board to appear. He failed to receive this notice until after the examination, which was resumed during his absence, had been concluded. The proceedings and findings of the board were approved by the President and his order in the case duly executed by the retirement of the officer (under section 1447 Rev. Stat.). But the vacancy created by such retirement remains unfilled, and no rights of any other person have intervened: *Held* that the action of the President can be revoked, and the officer allowed a rehearing. *Opinion of May* 29, 1878, 16 Op. 21.

IX. Retired List.

81. Retired officers of the Navy may be promoted on the reserved list, provided such promotion does not in any way disturb the line of

officers on active duty. *Opinion* 861, 10 Op. 107.

t of August 3, 1861, chap. 42, pro- e better organization of the mili- hment, does not repeal the act of , chap. 67, allowing Naval officers ed or retired list the pay of their ades when called into active serv-

urth section of the act of July 16, 83, does not authorize the appoint- xamining board to recommend the retirement of medical officers of *Opinion of Oct.* 4, 1864, 11 Op. 105.

a medical officer of the Navy is retired-list, under the act of April p. 63, it should appear that his n acted upon by both the boards in that act, and that both of them mmend him for promotion. *Ibid.* one board has acted, and reported on the case of such medical officer, duty of the Secretary of the Navy on the retired-list. *Ibid.*

t of June 25, 1864, chap. 152, has removing from the retired-list of- Navy who were retired in pur- act of December 21, 1861, chap. re not liable to be retired by the the act of 1864. *Opinion of June* p. 144.

n 20 of the act of July 16, 1862, xing the pay of retired naval offi- t repeal the previous laws author- ion on the retired-list. *Opinion* 867, 12 Op. 138.

y of retired officers of the Navy in all cases by the provisions of *Ibid.*

onstruction of the twentieth sec- act of July 16, 1862, chap. 183, he Attorney-General in his opin- 8, 1867 (12 Op. 138) reaffirmed. *ug.* 1, 1867, 12 Op. 222.

us opinions on the subject of the d naval officers reconsidered and *Opinion of Oct.* 31, 1867, 12 Op.

roviso to section 9 of the amenda- arch 2, 1867, chap. 174, "that no all be made to the grade of rear-ad- ne retired-list while there shall be the full number allowed by law," does not forbid the advancement to that grade on the retired-list, under section 1 of the act of July 25, 1866, chap. 231, of any commodore who may have commanded a squadron by order of the Secretary of the Navy, or performed other highly meritorious service. *Opinion of Dec.* 27, 1871, 13 Op. 544.

92. Upon examination of the finding of the retiring board in the case of Paymaster Rodney, of the Navy, the proceedings in which took place in June, 1871, and were approved by the President August 31, 1871, who at the same time directed that Paymaster R. be retired on furlough pay: *Advised* that the board found the latter incapacitated upon the sole ground that his peculiar mental temperament unfitted him for active service in the Navy; that his consequent retirement was not "because of misconduct"; and that there is no legal ground for setting aside the proceedings of the retiring board and revoking the order of retirement in his case. *Opinion of Feb.* 8, 1878, 15 Op. 446.

93. Whether the finding of the board was warranted by the evidence adduced cannot now be inquired into, as no power of review over its proceedings exist. *Ibid.*

94. Where a Naval retiring board, convened to inquire into the nature and cause of the dis ability of an officer, has once finished its work, rendered a complete judgment in the case, and adjourned, a subsequent reconsideration of its judgment by the board, unless authorized or directed by proper authority, can have no legal effect. *Opinion of July* 25, 1878, 16 Op. 104.

95. Accordingly, upon examination of the record of the proceedings before a naval retiring board, in the case of Paymaster Rodney: *Held* that the paper attached to the record, called a reconsideration of the finding of the board, was without legal effect, and that that officer was properly retired, under the original finding of the board, on furlough pay. *Ibid.*

X. Pay Corps.

96. Section 1475 Rev. Stat. does not give to a pay-inspector in the Navy the *grade* of commander. It confers upon him the *rank* of commander *by relation* (only) to the rank of a line officer of that grade. *Opinion of Jan.* 8, 1880, 16 Op. 415.

97. By the use of the terms "relative rank," in that section, Congress intended to make the

grades of the pay corps of the Navy equal to, but not identical with, the grades of the line with which they are by those terms associated. *Ibid.*

98. As generally used in reference to the naval and military service, the word "title" signifies the name by which an office, or the holder of an office, is designated and distinguished, and by which the officer has a right to be addressed; "grade," one of the divisions or degrees in the particular branch of the service, according to which officers therein are arranged; and "rank," the position of officers of different grades, or of the same grade, in point of authority, precedence, or the like, of one over another. Sometimes "rank" is used as synonymous with "grade," and the title of an officer (*e. g.*, admiral, vice-admiral) may denote both his grade and his rank. The designation "pay-inspector" expresses both title and grade in the pay corps: *Held* accordingly, that a commission in the following form: "John Doe, a pay-inspector from the —— day of ———, A. D. 187—, with the relative rank of commander," gives the appropriate title and grade of the officer named therein, and fully satisfies the requirement of section 1480 Rev. Stat. in that regard. *Ibid.*

XI. Civil Engineers.

99. In December, 1876, the President nominated W. to be a civil engineer in the Navy *vice* G., removed, and the nomination was confirmed by the Senate January 9, 1877, on which date he was also commissioned by the President. No notice was sent to G. of his removal or of the appointment of W. in his place. But from the terms of the act of March 2, 1867, chap. 172 (section 1413 Rev. Stat.), providing for the appointment of civil engineers, it is to be implied that the service of such officer may be dispensed with when necessary. The appointment is local in its character. And although, under section 9 of the act of March 3, 1871, chap. 117 (section 1478 Rev. Stat.) the President was given a discretionary power to confer relative rank upon civil engineers, this power has never been exercised, and they have no rank by which their relation to the officers or men in the Navy can be determined: *Held*, accordingly, (1) that civil engineers (in the absence of any action by the President conferring upon them relative rank) are not to be considered naval officers, but civil officers; (2) that it was competent to the President, if he deemed the further continuance of G. in the service not advisable, to nominate W. in his place; (3) the confirmation and appointment of W. operated to remove G., and the fact that the latter received no notice of his dismissal is unimportant. Opinions of August 19, 1876, and September 5, 1876 (15 Op. 165, 597), referred to and commented on. *Opinion of Nov.* 18, 1878, 16 Op. 203.

XII. Enlistment.

100. Enlistments for the naval service for "two years from the time when the ship shall last weigh anchor for sea" are regular for that term, although made before, and the persons enlisting serve awhile in fitting the vessel for sea. *Opinion of July* 13, 1811, 1 Op. 169.

101. Where a provision of law concerning enlistment in the naval service was merely *directory* to the Executive Government, and not meant for the protection of individuals: *Held* that it did not lie with those who had enlisted to say that the directions contained in the provision had not been obeyed, and that the Executive Government had violated its duty, this being a matter for the consideration of those to whom it is constitutionally answerable for the proper execution of the will of the legislature. *Ibid.*

102. The act of March 2, 1837, chap. 21, providing for enlisting boys for the naval service and to extend the term for the enlistment of seamen, does not include the enlistment of marines. *Opinion of Aug.* 26, 1842, 4 Op. 89.

103. The apprenticeship had in view by Congress relates only to those who may not be called on for military service on the land. *Ibid.*

104. An alien can be enlisted in the naval or Marine Corps service of the United States, and is bound, the same as citizens, to serve for the term of his enlistment. *Opinion of Nov.* 20, 1844, 4 Op. 350.

105. An infant is not bound by a contract of enlistment after he attains his full age, if he then repudiate it, even though it were entered into with the assent of his guardian for his benefit. *Ibid.*

106. The enlistment of minors in the naval service above the age of eighteen is valid wit

out the consent of the parents or guardians. *Opinion of Oct.* 4, 1867, 12 Op. 259.

107. There is no statutory provision authorizing the Secretary of the Navy to discharge persons enlisted in the naval service. *Ibid.*

XIII. Regulations.

108. Congress is empowered by the Constitution to make rules for the government and regulation of the land and naval forces of the United States. *Opinion of April* 5, 1853, 6 Op. 10.

109. Provision of statute exists by which the statute regulations of the Army may, within certain limits, be altered by the Secretary of War, but there is no such provision in regard to the statute regulations of the Navy. *Ibid.*

110. The President and subordinate executive officers, whether military or civil, possess a limited power to establish regulations, provided these be in execution of and supplemental to the statutes and statute regulations, but not to repeal or contradict existing statutes or statute regulations, nor to make provisions of a legislative nature. Hence, the "System of Orders and Instructions" for the Navy, issued by President Fillmore as "Executive of the United States," February 15, 1853, is without legal validity, and in derogation of the powers of Congress. *Ibid.*

111. Paragraphs 9, 12, and 13 of the Navy Regulations of 1876 (page 114) commented on and construed. *Opinion of May* 21, 1880, 16 Op. 494.

NAVY AGENT.

1. The office of Navy agent not having been created by law, there has been no law defining its duties from which to determine whether the Navy agent at New York has or has not rendered extra services *Opinion of Sept.*, 1819, 1 Op. 302.

2. In general, it is the duty of the Navy agents to execute such instructions as they may from time to time receive from the Executive Departments. *Ibid.*

3. The President has no authority, except in the recess of the Senate, to appoint any permanent agents for the purchase of supplies or for the disbursement of money for the Navy other than those referred to in the act of 3d March, 1809, chap. 28. *Opinion of March* 10, 1830, 2 Op. 320.

4. The Secretary of the Navy, however, under the act of 1st May, 1820, chap. 52, may contract for clothing and subsistence of the Navy; and when these supplies are to be furnished in places where there is no permanent agent, he must, of necessity, have the power to appoint a special agent to perform the duty. *Ibid.*

5. Where the agency is special and temporary the compensation must be regulated by contract. *Ibid.*

6. The Navy agent at New York is not competent to become a purchaser at a sale made by himself on account of the Government. *Opinion of Dec.* 2, 1844, 4 Op. 351.

NAVY DEPARTMENT.

See EXECUTIVE DEPARTMENTS; SECRETARY OF THE NAVY.

NEGLIGENCE.

1. Laches are not imputable to the Government. *Opinion of Oct.* 26, 1856, 8 Op. 125.

2. The Government is not responsible in law for negligence of public officers. *Ibid.*

3. The bailee of a bill of exchange, whether for pay or collection, is held to use due diligence in collecting the same or giving notice of its dishonor. *Ibid.*

4. Negligence in a given case is a question in part of fact, not purely of law. *Ibid.*

NEGOTIABLE PAPER.

See also BILL OF EXCHANGE; DRAFTS OF FOREIGN GOVERNMENT.

1. Bills of exchange may be indorsed by one having a power of attorney. *Opinion of April* 27, 1816, 1 Op. 182.

2. The cost occasioned by non-acceptance of a draft drawn by the chargé d'affaires at Lima should be paid by the Government if he was authorized to draw it. *Opinion of March* 25, 1832, 2 Op. 305.

3. Where an assistant quartermaster gave a draft on another assistant quartermaster to A.

and A sold it to B, who surrendered it for an authority to draw on the maker for the amount, and afterwards drawing therefor by making a bill and selling it to C, who caused it to be presented to the drawer of the first draft, on whom process had been served as garnishee at the suit of A: *Held* that the drawee should disregard such process, and that he pay the draft which he had authorized to be drawn upon him. *Opinion of Dec.* 8, 1840, 3 Op. 605.

4. When the United States, by their authorized officers, become a party to negotiable paper, they incur all the responsibilities of individuals who are parties to such instruments. *Opinion of Sept.* 1, 1842, 4 Op. 90.

5. As a general rule, when the Government, by its authorized agent, becomes a party to negotiable paper, it has all the rights, and incurs all the responsibilities, of other parties to such instruments. But exceptions to this rule may become established in the practice of different Departments of the Government. *Opinion of July* 10, 1856, 8 Op. 1.

6. The practice of the Post-Office Department takes the place of the general law in the question of notice on drafts of the Department. *Opinion of Aug.* 2, 1856, 8 Op. 24.

7. Where a mail contractor, in 1834, drew a bill upon the Post-Office Department which was accepted by the Treasurer, this is not upon its face a contract which makes the drawer primarily debtor to the holder; he is but surety for the acceptor, unless it can be proved that he had no funds in the hands of the drawee; that he procured the acceptance and passed the bill away for his own purposes. *Opinion of July* 21, 1858, 9 Op. 198.

8. In the absence of any proof it will be presumed that the bill was not accepted for the mere accommodation of the drawer, and that presumption is strengthened by evidence which shows that about the time when the bill is dated a large number of similar bills were drawn and accepted in the same way and sold in the market by the Post-Office Department for its own use. *Ibid.*

9. If the drawer of the bill was originally liable to the holder, and in equity bound to pay it, but it remained without demand and unacknowledged in the hands of the holder for more than six years, his liability ceased by lapse of time; and if it was afterwards paid by Congress to the holder, that fact would not revive the extinguished liability of the drawer. *Ibid.*

NEGROES.

1. Free colored persons are entitled to the benefits of the pre-emption act of September 4, 1841, chap. 16. *Opinion of March* 15, 1843, 4 Op, 147.

2. Free colored persons are distinguished from aliens, even where slavery exists, and are capable of all the rights of contract and property. *Ibid.*

NEUTRALITY.

1. The arrest by one belligerent of a vessel belonging to another belligerent, within the capes of Delaware Bay: *Held* to be a seizure on waters of the United States and in violation of their neutrality, and to give rise to the duty of restitution. *Opinion of May* 14, 1793, 1 Op. 33.

2. It is the right of an enemy to purchase goods and instruments of war of a neutral nation, yet it may be denied by a law passed for that purpose; but if the object of the law were to impede one belligerent power and to favor the other, such conduct would be a breach of neutrality. *Opinion of Jan.* 20, 1796, 1 Op. 61.

3. A citizen of a neutral State who, for hire, serves on a neutral ship employed in contraband commerce with either of the belligerent powers, is not liable to any prosecution for so doing by the municipal laws of his own State; nor can he be punished personally by that belligerent nation to whose detriment the trade would operate. But, in such cases, the contraband goods and vessel may be seized and confiscated. *Ibid.*

4. If a neutral mariner, who renders service in a neutral ship carrying on unlawful and contraband trade with a belligerent power, cannot be punished for so doing, it may be inferred with certainty that such neutral mariner, rendering the like service in an enemy ship employed in lawful commerce with the neutral country, ought not to be punished, unless the service be rendered in a ship attached to, and made part of, the hostile armament with intent to aid the hostility. *Ibid.*

5. It is not illegal for a ship-owner to sell s vessel and cargo to a citizen of Buenos yres, though it would be otherwise if such ssel was furnished with intent to serve a reign State in committing hostilities with ıother with which we are at peace. *Opinion July* 27, 1816, 1 Op. 190.

6. A vessel fitted out at Savannah with mament, munitions, and sea stores, and terwards found with a commission from ıe republic of Venezuela to cruise against ıe subjects of the King of Spain, and aving sailed on such a cruise, but under an- :her name, is seized at Savannah on the ıarge of having been fitted out in a port of ıe United States to cruise against the King Spain, is a fit case for adjudication, and not ne calling for the interference of the Govern- ıent. *Opinion of Sept.* 10, 1818, 1 Op. 232.

7. Columbian vessels are entitled, under the eaty with that republic, to make repairs in ır ports when forced into them by stress of eather; but they cannot enlist recruits there ither from among our citizens or foreigners, xcept such as may be transiently within the nited States. *Opinion of July* 16, 1825, 2 p. 4.

8. It is not a breach of neutrality to permit Spanish merchantman, captured as a prize y a Mexican war vessel, and brought by the atter into an American port unseaworthy, to e repaired and put in a condition to be car- ied home to a port of the captor for adjudica- ion. *Opinion of May* 3, 1828, 2 Op. 86.

9. There is high authority for the position hat a prize may be brought into a neutral port and sold without violating the law of nations concerning neutrality; but as there is no doubt of the authority of the neutral sov- ereign to prohibit such sale, and as the strongest considerations of expediency and safety urge him to do so, the better course is clearly to prohibit them. *Ibid.*

10. It would be a breach of neutrality to permit a neutral port to be made a cruising tation for a belligerent, or a depot for his poils and prisoners. *Ibid.*

11. The building of two schooners of war in New York for the Mexican Government, and eing about to be furnished with guns and the usual military equipments, is clearly within he third section of the act of April 20, 1818, hap. 88. *Opinion of Dec.* 29, 1841, 3 Op. 739.

12. These vessels having been built expressly for the service of Mexico, which is waging war against Texas, the persons are liable to the penalties of the act and the vessels to forfeiture. *Ibid.*

13. The policy of this country is, and ever has been, perfect neutrality and non-interference in the quarrels of other nations. *Ibid.*

14. If such vessels, however, were not delivered, nor the property changed, within our jurisdiction, but were sent out of the port under control of our own citizens unarmed, and every possible precaution was taken to insure pacific conduct on the high seas, the doctrine above laid down, though reaffirmed, does not as fully apply to the case now presented as was supposed from the first statement of the case. *Opinion of Jan.* 8, 1842, 3 Op. 741.

15. The act of April 20, 1818, chap. 88, like that of June 5, 1794, chap. 50, was intended to secure, beyond all risk of violation, the neutral and pacific policy which they consecrate as our fundamental law. *Ibid.*

16. The enlistment of seamen or others for marine service on Mexican steamers in the port of New York, they not being Mexicans transiently within the United States, is a clear violation of the second section of the act of April 20, 1818, chap. 88, to preserve and vindicate the neutrality of the United States, and the persons enlisted, as well as the officers enlisting them, are liable to the penalties thereby incurred. *Opinion of Sept.* 20, 1844, 4 Op. 336.

17. The repair of Mexican war steamers in the port of New York, together with the augmenting of their force by adding to the number of their guns, or by changing those originally on board for those of larger caliber, or by the addition of any equipment solely applicable to war, is a violation of the fifth section of the same act. *Ibid.*

18. But the repair of their bottoms, copper, &c., does not constitute any increase or augmentation of force within the meaning of the act, and the steamers themselves are not subject to seizure by any judicial process under it. *Ibid.*

19. Commanders and officers of vessels of other nations found to have violated the statute in question are amenable to the criminal jurisdiction of our courts, and may be prosecuted. *Ibid.*

20. The purchase and fitting out a war steamer by the German Government in the port of New York whilst a state of war exists between that Government and Denmark, and which is adapted for cruising and committing hostilities against the property or subjects of the latter, is contrary to the provisions of the third section of the act of 20th April, 1818, chap. 88. *Opinion of April* 28, 1849, 5 Op. 92.

21. The act makes no difference between the degrees of intent with which a vessel shall be fitted out; any intent to commit hostilities against a nation with which the nation fitting her out is at war is within its prohibitions. *Ibid.*

22. Belligerent ships of war, privateers, and the prizes of either, are entitled, on the score of humanity, to temporary refuge in neutral waters from casualties of the sea and land. *Opinion of April* 28, 1855, 7 Op. 123.

23. By the law of nations, belligerent ships of war, with their prizes, enjoy asylum in neutral ports for the purpose of obtaining supplies or undergoing repairs, according to the discretion of the neutral sovereign, who may refuse the asylum absolutely, or grant it under such conditions of duration, place, and other circumstances, as he shall see fit, provided that he must be strictly impartial in this respect towards all the belligerent powers. *Ibid.*

24. Where the neutral state has not signified its determination to refuse the privilege of asylum to belligerent ships of war, privateers, or their prizes, either belligerent has a right to assume its existence, and enter upon its enjoyment, subject to such regulations and limitations as the neutral state may please to prescribe for its own security. *Ibid.*

25. The United States have not by treaty with any of the present belligerents bound themselves to accord asylum to either; but neither have the United States given notice that they will not do it; and of course our ports are open, for lawful purposes, to the ships of war of either Great Britain, France, Russia, Turkey, or Sardinia. *Ibid.*

26. A foreign ship-of-war, or any prize of hers in command of a public officer, possesses, in the ports of the United States, the rights of exterritoriality, and is not subject to the local jurisdiction. *Ibid.*

27. A prisoner of war, on board a foreign man-of-war, or her prize, cannot be released by *habeas corpus* issuing from courts either of the United States or of a particular State. But, if such prisoner of war be taken on shore, he becomes subject to the local jurisdiction or not, according as it may be agreed between the political authorities of the belligerent and the neutral power. *Ibid.*

28. Miscellaneous expenditures, incurred by order of the State Department for the purpose of preserving the neutrality of the United States, are chargeable to the funds of that Department. *Opinion of Aug.* 24, 1855, 7 Op. 398.

29. If agents of the British Government, consuls, or others, being instructed to enlist military recruits, succeed by ingenious devices in evading the municipal law, and so escaping punishment as malefactors, such successful evasion of the municipal law serves to increase the intensity of the international wrong done to the United States. *Letter of instructions to District Attorney, Sept.* 12, 1855, 8 Op. 468.

30. The doctrine of the right of neutrals to purchase the ships of belligerents reaffirmed. *Opinion of Oct.* 8, 1855, 7 Op. 538.

31. The Secretary of the Treasury may regulate in such case the authentication of the bill of sale, which is the highest evidence of the change of property. *Ibid.*

32. Instructions regarding combinations in the United States for the invasion of Ireland. *Letter to District Attorney, Dec.* 8, 1855, 8 Op. 472.

33. The organization in one country or state of combinations to aid or abet rebellion in another, or in any other way to act on its political institutions, is a violation of national amity and comity, and an act of semihostile interference with the affairs of other people. *Opinion of Dec.* 2, 1856, 8 Op. 216.

34. But there is no municipal law to forbid and punish such combinations either in the United States or in Great Britain. *Ibid*

35. Relation of the President of the United States to prosecutions on account of illegal military expeditions. *Letter of instructions to District Attorney, Feb.* 7, 1857, 8 Op. 375.

36. Prosecution of parties engaged in recruiting troops at New York for military service in Central America. *Letter of instructions to District Attorney, Feb.* 8, 1857, 8 Op. 376.

37. The district attorney should not be in

structed, in the case of the "Meteor," to consent to the bonding of the vessel. *Opinion of March* 30, 1866, 11 Op. 444.

38. When a court of the United States, in the exercise of its discretion, has advisedly determined to permit a vessel libeled for violation of the neutrality laws to be released on bond, the executive department of the Government has no power or duty to interfere with the proceedings. *Opinion of Aug.* 4, 1866, 12 Op. 2.

39. Upon the facts of the case of the steamship "R. R. Cuyler," it appears that this vessel was prematurely and without probable cause libeled for violation of the neutrality laws, and she should be released on the owners giving the bond required by the ninth section of the act of April 20, 1818, chap. 88. *Opinion of Feb.* 11, 1867, 12 Op. 113.

40. Upon the representations of the Spanish minister in reference to the steamship "R. R. Cuyler," the Attorney-General finds it unnecessary to advise any action in addition to that heretofore taken in regard to her, pursuant to his previous opinion on the subject. *Opinion of Feb.* 28, 1867, 12 Op. 118.

41. Judicial proceedings should not be instituted by the United States, under the third section of the act of April 20, 1818, chap. 88, against certain gun-boats building in New York for the Spanish Government, and which, there is reason to believe, are to be employed by that Government against Cuba. The provisions of that section examined, and shown to be inapplicable, in view of all the circumstances, to the case considered. *Opinion of Dec.* 16, 1869, 13 Op. 177.

42. Proof that a vessel transported from Aspinwall to the coast of Cuba men, arms, and munitions of war, destined to aid the Cuban insurgents, is insufficient, by itself, to warrant proceedings against such vessel for violation of the neutrality law of the United States. *Opinion of Dec.* 4, 1871, 13 Op. 541.

43. After examination of the papers submitted in the case of the steamer "Virginius," and upon consideration of the information furnished thereby: *Advised* that the facts presented do not establish any breach of the neutrality laws, either by the owner of the steamer or by the persons engaged thereon. *Opinion of June* 5, 1872, 14 Op. 49.

NEUTRAL TERRITORY.

1. The arrest of the ship Grange within the capes of the Delaware was a seizure in neutral territory, and the attack of an enemy in neutral territory is absolutely unlawful. Restitution of the ship should be made. *Opinion of May* 14, 1793, 1 Op. 33.

2. The neutrality of the Delaware does not depend on any of the various distances claimed in the sea by different nations possessing the neighboring shore, for here the treaty of Paris and the *natural* law of nations will justify the United States in attaching to their coasts an extent into the sea beyond the reach of cannon-shot. *Ibid.*

OATH OF ALLEGIANCE.

It is the duty of the Secretary of the Interior to cause the oath of allegiance, prescribed by the act of August 6, 1861, chap. 62, to be administered to the Board of Police created for the District of Columbia by the statute of the same date. *Opinion of Aug.* 22, 1861, 10 Op. 104.

OFFICE.

See also COMPENSATION.

I. *Appointment.*
II. *Acceptance.*
III. *Oath of Office.*
IV. *Term and Tenure.*
V. *Holding Over.*
VI. *Performing Duties of more than one Office.*
VII. *Plurality of Offices.*
VIII. *Eligibility.—Disability.*
IX. *Suspension.—Removal.*
X. *Resignation.*
XI. *Abeyance.—Vacancy.*
XII. *Office of Trust.*

I. Appointment.

1. The President cannot appoint a commissioner to make a treaty with Indians, for the purpose of extinguishing their title to lands within the United States, without the advice of the Senate. *Opinion of May* 26, 1796, 1 Op. 65.

2. The President has power to nominate to the Senate a suitable person for the office of brigadier-general of the militia of the Northwest Territory. *Opinion of April* 12, 1810, 1 Op. 165.

3. The President has power to fill, during a recess of the Senate, by temporary commission, a vacancy that occurred by expiration of commission during a previous session of that body, the term in the Constitution, "may happen during the recess," being equivalent to "*may happen to exist* during the recess," without which interpretation it could not be executed in its spirit, reason, and purpose. *Opinion of Oct.* 22, 1823, 1 Op. 631.

4. The appointment of a navy agent during the recess of the Senate, made in the case of a vacancy occurring during the recess, is in the exercise of the constitutional power of the President, and not by force of the act of 3d of March, 1809, chap. 28; and the limitation of such appointment is to the end of the succeeding session of Congress, unless it be sooner determined by the acceptance of a new commission under an appointment made by and with the advice and consent of the Senate. *Opinion of April* 2, 1830, 2 Op. 333.

5. The exercise of the power of the President to fill vacancies during a recess of the Senate is not limited to those which occur during a recess. *Opinion of July* 19, 1832, 2 Op. 525.

6. The Senate cannot originate an appointment; its constitutional action is confined to a simple affirmation or rejection of the President's nominations; and such nominations fail whenever it disagrees with them. *Opinion of March* 29, 1837, 3 Op. 189.

7. The Senate may suggest conditions and limitations to the President, but cannot vary those submitted by him; for no appointment can be made except on his nomination, agreed to by the Senate without qualification or alteration. *Ibid.*

8. Accordingly, in the case of John R. Cox, jr., nominated for lieutenant in the Navy from date, and confirmed with the qualification that he shall take rank next after Lieutenant E. Peck, *held* that a commission cannot properly issue. *Ibid.*

9. The arrangements for an exploring expedition being at the discretion of the President, he may appoint and employ a medical assistant thereto without the formality of an examination and approval by the board of surgeons. *Opinion of Oct.* 5, 1837, 3 Op. 289.

10. The President and Senate, by nomination and confirmation, may correct the date of military appointments, even after as great a lapse of time as has occurred in the case of Captain Twiggs. *Opinion of March* , 1838, 3 Op. 307.

11. The commissions of the receivers-general, appointed under the act of the 4th of July, 1840, chap. 41, should be made out, sealed, and recorded at the State Department. *Opinion of July* 15, 1840, 3 Op. 569.

12. The liabilities consequent upon a reappointment to an office already held do not commence until the term commences for which such reappointment is made. *Opinion of March* 3, 1841, 3 Op. 626.

13. The Constitution authorizes the President to fill vacancies that may happen during the recess of the Senate, even though the vacancy shall occur after a session of the Senate shall have intervened. *Opinion of Oct.* 22, 1841, 3 Op. 673.

14. The commission of an officer appointed during a recess of the Senate, who is afterwards nominated and rejected, is not thereby determined, nor his sureties released from liability on account of any subsequent breach of his official bond. *Opinion of May* 20, 1842, 4 Op. 30.

15. Under the act of 27th February, 1801, chap. 15, he is authorized to make an original appointment of a justice of the peace during a recess of the Senate for the District of Columbia. *Opinion of April* 13, 1843, 4 Op. 174.

16. After a confirmation by the Senate of a nomination, the President may, in his discretion, withhold a commission. *Opinion of Aug.* 9, 1843, 4 Op. 218.

17. The executive department being charged with the duty of seeing that the laws are faithfully executed, has authority to appoint commissioners and agents to make investigations required by acts or resolutions of Congress; but it cannot pay them, except from an appropriation for that purpose. *Opinion of Sept.* 21, 1843, 4 Op. 248.

18. The President cannot appoint district judges, attorneys, and marshals, during a recess of the Senate, for newly admitted States,

where the offices were created and took effect during the session of that body. *Opinion of April* 18, 1845, 4 Op. 362.

19. If vacancies are known to exist during the session of the Senate, and nominations are not then made to fill them, they cannot be filled by the Executive during the subsequent recess. *Ibid.*

20. The President is authorized to fill up vacancies in the offices of the postmasters whose appointment was devolved upon him by the act of July 2, 1836, chap. 270, which happen to exist during a recess of the Senate. *Opinion of Aug.* 13, 1846, 4 Op. 523.

21. Even though the vacancy occurred before the session of the Senate, if that body, during its session, neglected to confirm a nomination to fill it, the President may fill it by a temporary appointment, and public considerations seem to require him to do so. *Ibid.*

22. There is no authority for the appointment of an architect and superintendent for the building of the wings of the Patent Office, directed to be constructed by the civil and diplomatic appropriation act of March 3, 1849, chap. 100, conferred either by that or any other existing law; and the appointment of such an officer by the Secretary of the Interior should be revoked. *Opinion of April* 19, 1849, 5 Op. 88.

23. Appointments provided for by act of Congress merely in general terms must be made by the President by and with the advice and consent of the Senate. *Opinion of March* 12, 1853, 6 Op. 1.

24. A provision of statute (sections 2 and 3 of the act of July 4, 1836, chap. 352) in terms authorizes the appointment, with consent of the Senate, of three "Principal clerks" of specific designation of positions: *Held* that this provision was not repealed by a subsequent act (section 3 of the act of March 3, 1853, chap. 97) for dividing clerks of the several Departments into classes upon examination. *Opinion of June* 10, 1853, 6 Op. 42.

25. A territorial court cannot appoint an attorney for the Territory, but may designate a person to perform in court any duty of such attorney in his absence, which person will have a right to compensation from the United States. *Opinion of Aug.* 13, 1853, 6 Op. 80.

26. The commander of a squadron of the Navy on a foreign station has power to appoint a provisional or acting purser in the absence of any purser of the Navy duly appointed by the President. *Opinion of March* 12, 1854, 6 Op. 358.

27. Although such appointment be subsequently disapproved by the Secretary of the Navy, still the acts which the acting purser may have performed while so acting are not thereby invalidated. *Ibid.*

28. The President has power by the Constitution to appoint diplomatic agents of the United States of any rank, at any place, and at any time, in his discretion, subject always to the constitutional conditions of relation to the Senate. *Opinion of May* 25, 1855, 7 Op. 189.

29. The power to make such appointments is not derived from, and cannot be limited by, any act of Congress, except in so far as appropriations of money are necessary to provide means for defraying the expense of this as of any other business of the Government. *Ibid.*

30. During the entire administrations of Washington, John Adams, Jefferson, and the first term of that of Madison, no mention occurs in any appropriation act of ministers of a specified rank at this or that place; but, sometimes by special act, and sometimes in the general appropriation acts, the provision for the diplomatic corps consisted of so much money "for the expenses of foreign intercourse," to be expended in the discretion of the President; and although, since that time, the practice has been to provide for certain ministers at certain places, yet that mode of legislation does not in terms, and could not in law, either extend or restrict the constitutional authority of the President, by and with the advice and consent of the Senate, to negotiate treaties and make diplomatic appointments, according to his and their judgment of the public interests of the Union. *Ibid.*

31. Commencing with the administration of our foreign affairs by Mr. Jefferson under President Washington, and so continuing under every successive President down to the present time, it has been the uniform practice of the Government to regard the titular designations and the appointments of all diplomatic ministers as the exclusive and proper constitutional function of the conjoint executive department, that is, the President and the Senate. *Ibid.*

32. The President has constitutional power to appoint, by temporary commission, a diplo-

matic officer to meet any public exigency arising in the recess of the Senate. *Ibid.*

33. The President has constitutional power, in the recess of the Senate, to change the designation of any mission, either by substituting a higher for a lower rank, or a lower for a higher, independently of any authorizing act of Congress. *Ibid.*

34. Congress cannot by law require that the President shall make removals or reappointments or new appointments of public ministers on a given day; nor that he shall at all times appoint and maintain a minister of a prescribed rank at a particular court; because, while the House of Representatives has control of the tax power and of appropriations, yet the Constitution has intrusted the whole negotiating power to the President in behalf of the aggregate Union, and to the Senate composed of the legislative and executive ministers of the separate sovereignty and rights of each of the States of the Union. *Ibid.*

35. When the act of March 1, 1855, chap. 133, to remodel the diplomatic system of the United States, declares that from and after the 30th of June, 1855, the President *shall* appoint envoys extraordinary, with secretaries of legation, at every place except one, in Europe, Asia, or America, where the United States now have any diplomatic agent, whether envoy, minister resident, chargé d'affaires, or commissioner, and proceeds to define the salaries of such envoys and secretaries, it could not constitutionally mean, and therefore is not to be construed as meaning, to *require* the President to make any such appointments, but only to determine what shall be the salaries of such officers, in case they have been, or shall be, lawfully appointed at any time by the President. *Ibid.*

36. The President may, notwithstanding this act, continue to appoint or to retain public ministers of the rank of commissioner, minister resident, or chargé d'affaires, in his discretion, with concurrence of the Senate. *Ibid.*

37. The President may or not, in his discretion, appoint secretaries of legation at the places mentioned in the act. *Ibid.*

38. If the legal effect of the act could be considered as the prospective creation of new offices, to begin to exist at a future day certain, then the President might appoint on that day as for a vacancy then existing in the recess of the Senate; but as the office of public minister is, in fact, a constitutional, not a statute one, he might appoint without the act, and in virtue of the Constitution. *Ibid.*

39. The phrase in the act "shall, by and with the advice and consent of the Senate appoint," cannot take away any constitutional power of the President to appoint in the recess of the Senate, and has no effect save to negative the idea of its being intended to create any such "inferior officers," the appointment of which may be vested by Congress in the President alone or in the heads of Departments. *Ibid.*

40. The whole effect of the act, as to appointments, is, by the provision for new salaries on a given day, to invite the President to make new appointments on that day, if he see fit; but whether he shall make them or not is a question of his mere executive discretion under the Constitution. *Ibid.*

41. The question of executive discretion in the case, being wholly independent of this act, is the permanent one of wise and lawful discretion, having its measure in the exigencies of the public service and the letter and spirit of the Constitution. *Ibid.*

42. The President may lawfully appoint new envoys and secretaries at all the places mentioned in the act; the act affords the pecuniary means of doing this; the President may well and should do this in any particular case where the public service seems to him to require it; but for him to change the *personnel* or raise the rank of the entire diplomatic service of the United States in the recess of the Senate, and without the concurrence of that co-ordinate authority, would not be a just exercise of the Presidential discretion, whether in its relation to the ministers themselves, to the public service, or to the spirit of the Constitution. *Ibid.*

43. It belongs exclusively to the President of the United States, by and with the advice and consent of the Senate, to appoint consular officers to such places as he and they deem to be meet. *Opinion of June* 2, 1855, 7 Op. 243.

44. Congress may by law vest the appointment of inferior consular officers in the President alone or in the Secretary of State. *Ibid.*

45. When the act of March 1, 1855, chap. 133, remodeling the consular system, says that from and after the 30th of June, 1855, the President *shall* appoint consuls to certain places,

it means that he *may* appoint them, if he see fit, with such reference to the advice and consent of the Senate as the Constitution prescribes. *Ibid.*

46. The act does not require him to appoint new consuls, or to reappoint the present incumbents, at the places mentioned, nor to remove consuls now existing at places not named in the act, nor to omit to appoint new ones at other places not named in it. *Ibid.*

47. Nothing in the act forbids the continued appointment of vice consuls or consular agents, with approval of the Secretary of State. *Ibid.*

48. The provisions of the act against the appointment of any citizen of the United States, not actually residing therein or abroad in the public service at the time, is directory only, not mandatory on the President. *Ibid.*

49. In the case of appointments and removals by the President, when the removal is not by direct discharge or an express vacating of the office by way of independent fact, but merely by the operation of a new commission or appointment, then the virtue of the old commission ceases only when notice of the new commission is given to the outgoing officer, either by the President, or by the new officer exhibiting his commission to the old one, or by other sufficient notice; and the old officer continues to be entitled to compensation down to the time of his ceasing to perform the duties of his office. *Opinion of June* 30, 1855, 7 Op. 304.

50. Power of appointment under the United States cannot be communicated by act of Congress to persons not named to that end by the Constitution. *Opinion of Aug.* 22, 1856, 8 Op. 41.

51. A nomination made to the Senate by the President of A. B. in the place of C. D., removed, does not vacate the office. *Opinion of Feb.* 10, 1857, 8 Op. 379.

52. The President has no authority to appoint a commissioner with powers of commissioners appointed by a circuit court. *Opinion of June* 24, 1861, 10 Op. 71.

53. The President has lawful power in the recess of the Senate to fill a vacancy on the bench of the Supreme Court, which vacancy existed during the last session of the Senate, by "granting a commission which shall expire at the end of their next session." *Opinion of Oct.* 15, 1862, 10 Op. 356.

54. Where the President made a temporary appointment of a collector of internal revenue during a recess of the Senate, and no nomination was made during the next regular session, or during an extra session called thereafter: *Held* that the President, after the adjournment of the extra session, might fill the vacancy by a second temporary appointment. *Opinion of March* 25, 1865, 11 Op. 179.

55. The first section of the act of March 3, 1865, chap. 78, providing for the appointment of assistant assessors of internal revenue by the assessors, is unconstitutional. *Opinion of April* 25, 1865, 11 Op. 209.

56. The sixteenth section of that act, repealing all provisions of any former act inconsistent therewith, repealed so much of the act of June 30, 1864, chap. 173, as conferred on the Secretary of the Treasury the power of appointing, with the approval of the Commissioner of Internal Revenue, the assistant assessors. *Ibid.*

57. Under these circumstances, the President, since the passage of the act of March 3, 1865, is authorized to commission the assistant assessors. *Ibid.*

58. It is the duty of the President, before any judicial determination has been had of the constitutionality of the provision of the act of March 3, 1865, before mentioned, to exercise his constitutional power of appointment in the case of assistant assessors. *Ibid.*

59. The President has full and independent power to fill vacancies in the recess of the Senate, without any limitation as to the time when they first occurred. *Opinion of Aug.* 30, 1866, 12 Op. 32.

60. The nomination for an office to, and the confirmation thereof by, the Senate, do not of themselves confer the office upon the person nominated, as the President may withhold the commission. *Opinion of Nov.* 6, 1867, 12 Op. 304.

61. But if the commission be signed and sealed, and the officer be of a class not removable by the President, in that case the President's right over the office no longer exists. The right of the office thereto is vested, and his commission irrevocable. *Ibid.*

62. Where the officer belongs to a class removable at any time by the President, the commission, though made out, may be arrested in the office, and the right to the office does not vest. *Ibid.*

matic officer to meet any public exigency arising in the recess of the Senate. *Ibid.*

33. The President has constitutional power, in the recess of the Senate, to change the designation of any mission, either by substituting a higher for a lower rank, or a lower for a higher, independently of any authorizing act of Congress. *Ibid.*

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57. Under these circumstances, the President, since the passage of the act of March 3, 1865, is authorized to commission the assistant assessors. *Ibid.*

58. It is the duty of the President, before any judicial determination has been had of the constitutionality of the provision of the act of March 3, 1865, before mentioned, to exercise his constitutional power of appointment in the case of assistant assessors. *Ibid.*

59. The President has full and independent power to fill vacancies in the recess of the Senate, without any limitation as to the time when they first occurred. *Opinion of Aug.* 30, 1866, 12 Op. 32.

60. The nomination for an office to, and the confirmation thereof by, the Senate, do not of themselves confer the office upon the person nominated, as the President may withhold the commission. *Opinion of Nov.* 6, 1867, 12 Op. 304.

61. But if the commission be signed and sealed, and the officer be of a class not removable by the President, in that case the President's right over the office no longer exists. The right of the office thereto is vested, and his commission irrevocable. *Ibid.*

62. Where the officer belongs to a class removable at any time by the President, the commission, though made out, may be arrested in the office, and the right to the office does not vest. *Ibid.*

63. A designation by a majority of the board—constituted under the act of August 30, 1852, chap. 106—of inspectors of hulls and boilers, and an approval of the designation by the Secretary of the Treasury, are sufficient to constitute the parties designated incumbents of those offices. *Opinion of April* 27, 1868, 12 Op. 392.

64. The act of September 30, 1850, chap. 90, precludes an officer who may perform, under an *ad interim* authority, the duties of another office, in which a vacancy exists, from receiving the compensation or salary provided for both offices. *Opinion of Aug.* 10, 1868, 12 Op. 459.

65. In such a case the *ad interim* officer is not invested with a new office, but he is merely required to perform new duties. *Ibid.*

66. The predicament of a vacancy, which may be filled by a temporary appointment by the President, under the Constitution, is not confined by it to vacancies originating or beginning to exist during the recess of the Senate, but embraces all vacancies that from any casualty happen to exist at a time when the Senate cannot be consulted as to filling them. *Opinion of Aug.* 17, 1868, 12 Op. 449.

67. It is to be presumed that Congress, in enacting the third section of the tenure-of-office act of March 2, 1867, chap. 154, accepted the words of the Constitution therein employed in the same sense in which they had been accepted and acted upon by the executive branch of the Government. *Ibid.*

68. The case of an original vacancy is not affected by the tenure-of-office act of March 2, 1867, chap. 154. *Opinion of Aug.* 17, 1868, 12 Op. 455.

69. When an office is created by a law taking effect during a session of the Senate, and no nominations are made thereto, the office may be filled by Executive appointment during the recess of the Senate. *Ibid.*

70. The opinion of Mr. Attorney-General Mason in the case of the Federal offices in Florida and Iowa (4 Op. 363) doubted. *Ibid.*

71. When the office of district attorney became vacant by expiration of the statutory term during a session of the Senate, and the Senate adjourned without taking any action on the nomination made by the President to the office: *Held* that the President had power, after the adjournment of the Senate, to grant a commission to fill the vacancy, to expire at the end of the next session of the Senate. *Opinion of Aug.* 21, 1868, 12 Op. 469.

72. The power of appointment conferred by the Constitution is a substantial and not merely a nominal function, and the judgment and will of the constitutional depositary of that power should alone be exercised or have legal operation in filling offices created by law. *Opinion of Aug.* 31, 1871, 13 Op. 516.

73. The right of Congress to prescribe qualifications for office is limited by the necessity of leaving scope for the judgment and will of the person or body in whom the Constitution vests the power of appointment. *Ibid.*

74. Congress may, at its pleasure, distribute the appointment of inferior officers between the President, courts of law, and heads of Departments, or confide the same exclusively to one or more of these depositaries; but it cannot constitutionally vest such appointment elsewhere, directly or indirectly. *Ibid.*

75. Accordingly, an act requiring the President, the courts, and heads of Departments to appoint to office the persons designated by an examining board as the fittest would be at variance with the Constitution, inasmuch as it would virtually place the power of appointment in that board. *Ibid.*

76. But though the result of an examination before such a board cannot be made legally conclusive upon the appointing power, against its own judgment and will, yet it may be resorted to in order to inform the conscience of that power. *Ibid.*

77. And notwithstanding that the appointing power alone can designate an individual for an office, still, either Congress, by direct legislation, or the President, by authority derived from Congress, can prescribe qualifications, and require that the designation shall be out of a class of persons ascertained by proper tests to have those qualifications. *Ibid.*

78. Where, under the operation of the act of March 2, 1875, chap. 118, and the joint resolution of March 3, 1875 [No. 7], two vacancies existed in the office of paymaster in the Army, with the rank of major, and nominations therefor were sent to the Senate by the President, but which that body failed to confirm before adjourning: *Held* that it is competent to the President to fill the two vacancies, during the recess of the Senate, by temporary

appointments, and that he is not subject to any restrictions as to the persons whom he may thus appoint. *Opinion of April* 24, 1875, 14 Op. 563.

79. The construction put upon the clause in the Constitution giving the President power "to fill up all vacancies that may happen during the recess of the Senate by granting commissions which shall expire at the end of their next session," by former Attorneys-General, namely, that it confers upon him full power to fill vacancies in the recess of the Senate *irrespective of the time when such vacancies first occurred*, considered now to be the settled interpretation of that clause with the Department of Justice. *Ibid.*

80. The officers designated in section 2 of the act of March 3, 1875, chap. 130, as "deputy comptroller," "deputy commissioner of customs," "deputy auditor," and "deputy register," should be appointed by the President, with the advice and consent of the Senate. Section 169 Rev. Stat. does not give the head of the Treasury Department authority to appoint them. That act creates in each of the bureaus referred to a new office, under the designation of "deputy comptroller," &c., and tacitly abolishes the existing office of chief clerk therein; but it makes no provision on the subject of appointment to the newly-created offices. *Opinion of June* 25, 1875, 15 Op. 3.

81. The general rule deducible from article 2, section 2, of the Constitution is that the appointment to any office of the United States established by Congress must be made by the President, with the concurrence of the Senate, unless it is otherwise provided in the Constitution or by legislative enactment. *Ibid.*

82. The President has power to fill, by temporary appointment, in a recess of the Senate, a vacancy then existing which occurred during the next preceding session of that body. *Opinion of March* 17, 1877, 15 Op. 207.

83. There is no authority of law for the appointment of a deputy collector, deputy naval officer, and deputy surveyor at the port of New York without compensation, and then appointing such officers clerks at a larger compensation than that affixed by law to the positions of deputy collector, deputy naval officer, and deputy surveyor at that port. (But see 15 Op. 356.) *Opinion of June* 4, 1877, 15 Op. 286.

84. The provision in section 2 of the act of July 27, 1866, chap. 284, giving the Secretary of the Treasury authority to appoint assistant appraisers for the port of New York, is impliedly repealed by section 2536 Rev. Stat., under which latter section the appointment of those officers is in future to be made by the President, with the advice and consent of the Senate. *Opinion of Feb.* 14, 1878, 15 Op. 449.

85. In the absence of a statutory provision to the contrary, the appointment of any officer of the United States devolves upon the President, with the concurrence of the Senate. *Ibid.*

86. The ten days' limitation imposed by section 180 Rev. Stat. upon the temporary filling of vacancies occasioned by death or resignation is to be computed from the date of the President's action. *Opinion of March* 8, 1878, 15 Op. 458.

87. The construction of the provision in the Constitution (article 2, section 2) investing the President with "power to fill up all vacancies that may happen during the recess of the Senate," &c., by which this provision is construed to comprehend all vacancies that may *happen to exist* in a recess of the Senate, and according to which the President has authority thereunder to fill, during a recess of the Senate, not only vacancies that have originated in the recess, but also such as originated whilst the Senate was in session—reaffirmed, upon full review of the opinions of former Attorneys-General on the same subject, all of which are shown to concur in that construction. And *semble* that the same construction has, in practice, been uniformly adopted by the Executive, at least since the time of President Monroe. *Opinion of June* 18, 1880, 16 Op. 523.

88. In the provision in section 3 of the tenure-of-office act of March 2, 1867, chap. 154 (which, with the amendment made by section 3 of the act of April 5, 1869, chap. 10, is reproduced in section 1769 Rev. Stat.), authorizing the President "to fill all vacancies which may happen during the recess of the Senate by reason of death, &c., by granting commissions which shall expire at the end of their

next session thereafter," Congress must be presumed to have employed the words of the Constitution used therein, viz, "which may happen during the recess of the Senate," in the same sense in which they have been accepted and acted upon by the executive branch of the Government. (Reaffirming opinion of Attorney-General Evarts, in 12 Op. 449.) *Ibid.*

89. The further provision in the same section (also in section 1769 Rev. Stat.) putting "in abeyance" an office "so vacant," &c., if no appointment thereto with the consent of the Senate is made "during such next session of the Senate," does not assume to act upon the power of appointment given to the President by the Constitution. It acts upon the office itself, but does not thus act until the expiration of the *next* session of the Senate. Hence, in the case of a vacancy which has originated during a session of the Senate, the office cannot be affected by that provision until the end of the succeeding session of the Senate; and during the intervening recess of the Senate the President may fill the vacancy by a temporary appointment. *Ibid.*

90. Accordingly, where the office of collector of customs for the port of Philadelphia became vacant while the Senate was in session, by expiration of the term of the incumbent, and the President thereupon, during the same session of that body, sent to the Senate for confirmation the nomination of H. for the office; but the Senate having subsequently adjourned without acting upon the nomination, the President, during the recess thereof immediately following, appointed H. to fill the vacancy in said office by granting him a commission to expire at the end of the next ensuing session of the Senate: *Held* that it was competent to the President thus to fill the vacancy by a temporary appointment. *Ibid.*

91. Where the office of district attorney became vacant during a session of the Senate, and was provisionally filled by an appointment made by the circuit justice under section 793 Rev. Stat.: *Held* that it was competent to the President during the next following recess of the Senate, while the office was still provisionally filled as aforesaid, to make a temporary appointment thereto, to expire at the end of the next session of the Senate thereafter. *Opinion of July* 9, 1880, 16 Op. 539.

92. The appointment of the circuit justice, authorized by said section, contemplates only a temporary mode of having the duties of the office performed until the President acts. The office is not the less *vacant*, notwithstanding the appointment of the circuit justice, so far as the President's power of appointment is concerned. *Ibid.*

93. Under sections 177, 178, 179, and 180 Rev. Stat. the President has power to temporarily fill (by an appointment *ad interim*, as there prescribed) a vacancy occasioned by the death or resignation of the head of a Department, or of the chief of a bureau therein, for a period of ten days only. When the vacancy is thus temporarily filled once for that period, the power conferred by the statute is exhausted. It is not competent to the President to appoint either the same or another officer to thereafter perform the duties of the vacant office for an additional period of ten days. *Opinion of Dec.* 31, 1880, 16 Op. 596.

II. Acceptance.

94. The failure of a judge, appointed during the recess of the Senate, to proceed to the place of his appointment and enter upon the discharge of his duties, deemed (under the circumstances of the case considered) a revocation of his acceptance of the office. *Opinion of Jan.* 17, 1821, 5 Op. 728.

95. The acceptance of a new commission, after confirmation by the Senate, of an appointment made during a recess, is a virtual superseding and surrender of that granted on the original appointment. *Opinion of April* 16, 1830, 2 Op. 336.

III. Oath of Office.

96. Clerks in the Executive Departments are officers, and required to take the oath prescribed by the act of July 2, 1862, chap. 128. *Opinion of Nov.* 7, 1868, 12 Op. 521.

97. The act of February 15, 1871, chap. 53, prescribing an oath of office to be taken by persons who participated in the late rebellion, was intended to relieve those to whom it relates from the necessity of taking the oath required by the act of July 2, 1862, chap. 128, commonly known as the *test-oath*, and in lieu thereof to require the modified oath prescribed by the act of July 11, 1868, chap. 139. *Opinion of March* 9, 1871, 13 Op. 390.

he provisions of the act of July 2, 1862, een taken by Congress to include mail ors, they are to be regarded as also l in the provisions of the act of Febru- 1871. *Ibid.*

ccordingly, mail contractors who par- l in the late rebellion, but are not dis- l from holding office by the fourteenth ient to the Constitution, and who en- the service of carrying the mail since of the act of February 15, 1871, should : oath prescribed by the act of July 11, *Ibid.*

IV. Term and Tenure.

Where an act of Congress gives the it power to appoint an officer, without the tenure by which the office is to be commission may legally issue to the) hold the office during the pleasure of sident. *Opinion of June* 15, 1818, 1

Where a new commission is accepted it les the old one; and the four years, ed by law as the official term of the e, must commence to run from its The bonds taken under the first com- cease to have effect when the com- terminates. *Opinion of April* 2, 1830, 3.

A commission issued by the President ı recess of the Senate continues until of the next session of Congress, unless determined by the President, even the individual commissioned shall en meanwhile nominated to the Sen- the nomination rejected. *Opinion of* , 1830, 2 Op. 336.

Where an officer appointed temporarily President is afterwards appointed by ion, with consent of the Senate, his ointment commences from the period official act indicating his acceptance of e, whether it be a direct communica- that effect, or his taking the oath of : his giving a bond. *Opinion of July* , 3 Op. 577.

The term of office of the commissioners ed, in pursuance of the provisions of of June 27, 1846, chap. 34, to examine nder the treaty with the Cherokees of limited to one year from the date of pointment. They cannot be continued in office, under their present commissions, beyond that time. *Opinion of May* 13, 1847, 4 Op. 578.

105. Commissioners appointed for the performance of a special duty in virtue of a statute cannot continue to act as such after such statute shall have expired by its own limitation. *Opinion of April* 29, 1855, 7 Op. 448.

106. Where a person was appointed deputy postmaster, under a temporary commission, issued on October 26, 1866, and he was afterwards rejected by the Senate before the passage of the tenure-of-office act of March 2, 1867, chap. 154, and no confirmation was had of a successor until March 2, 1867, who took possession of the office on April 14, 1867, it was *held* that he was entitled, under the tenure-of-office act, to compensation for the whole of that period, and to the time when his successor took charge of the office. *Opinion of Nov.* 21, 1867, 12 Op. 307.

107. The "tenure-of-civil-office act" of March 2, 1867, chap. 154, impresses upon a class of civil officers a tenure at the will of the office-holder, which cannot be terminated except by the concurrence of the President and the Senate in the appointment of a successor, and his actual induction into the office. *Opinion of Aug.* 10, 1868, 12 Op. 444.

108. The purpose of that act was to change the doctrine and practice of the Government, by which removal from office was effected at the mere discretion of the President. *Ibid.*

109. The only interruption of the personal right of the officer against his will, possible under the act, is the general power of impeachment and judgment thereon, or the special proceedings of suspension, accusation, and judgment thereon, provided by the act, which partake of the nature of impeachment. *Ibid.*

110. The tenure-of-office act of March 2, 1867, chap. 154, does not prolong the term of any office beyond that limited by law. *Opinion of Aug.* 21, 1868, 12 Op. 469.

111. The provision in the sixteenth section of the act of March 3, 1877, chap. 108, relating to the Hot Springs Commission, namely, "That said commissioners shall hold their offices for the period of one year from the date of appointment," fixes the duration of the term of the Commission, and without further legislation it cannot be continued beyond the

period indicated therein. *Opinion of Jan.* 17, 1878, 15 Op. 431.

112. The term of a postmaster who is appointed by the President does not expire upon the reduction of his office by decrease of salary to one of the fourth class (vacancies in offices of which class are filled by appointment by the Postmaster-General). Such postmaster is entitled to remain in the office during the term for which he was appointed, unless sooner removed according to law. *Opinion of May* 29, 1878, 16 Op. 18.

113. On April 30, 1877, during a recess of the Senate, E. was appointed by the President to the office of Chief of the Bureau of Construction and Repair in the Navy Department to fill a vacancy, his commission to expire at the end of the next session of the Senate. At the next session (extra) of the Senate, in October, 1877, he was nominated by the President to that body for said office, under section 421 Rev. Stat., for the term of four years. The nomination was not acted upon during such session, which ended December 3, 1877, and the office became again vacant. At the session of the Senate which immediately ensued, E. was again nominated by the President to date "from April 28, 1877," and the nomination was confirmed in the same terms on April 15, 1878: *Held* that, notwithstanding the special wording of the nomination to, and confirmation by, the Senate, the term of office of the appointee, E., as prescribed by section 421 Rev. Stat., must be deemed to begin from the date of his appointment (namely, in April, 1878), and not "from April 28, 1877," the date specified in the nomination. *Opinion of Jan.* 27, 1880, 16 Op. 656.

114. By the act of June 11, 1878, chap. 180, authorizing the appointment of two Commissioners of the District of Columbia, and fixing their official term at "three years, and until their successors are appointed and qualified," it is provided that "the first appointment shall be one Commissioner for one year and one for two years, and at the expiration of their respective terms their successors shall be appointed for three years." A Commissioner who had received one of the first appointments under the act, being that made for two years, resigned, whereby the office became vacant before the expiration of the two years for which he was appointed: *Held* that the commission of his successor should be for the term of three years; the words of the statute, "and at the expiration of *their respective terms* their successors shall be appointed for three years," being construed to mean that when the term of the incumbent comes to an end, whether by its own limitation, or by death, resignation, or otherwise, the President is then and thereafter to appoint for the full term of three years. *Opinion of July* 7, 1880, 16 Op. 537.

V. Holding Over.

115. An inspector of customs continues in office after the death, resignation, or removal of the collector by whom he was appointed, until a successor shall be qualified to act. *Opinion of Feb.* 18, 1831, 2 Op. 411.

116. When office is held during the pleasure of any designated officer, it is at the pleasure of the officer, and not of the individual; and to determine that office, otherwise than by the act of the immediate incumbent, there must be some official act indicative of the will of the officer at whose pleasure it is held. If he ceases his official functions without having done any act indicative of his will, his appointee must necessarily hold over until a successor is appointed and vested with a like discretion. *Ibid.*

117. On the ground of public necessity, naval and other administrative officers mentioned in the act of May 15, 1820, chap. 102, must be considered, in contemplation of law, as holding their offices until their successors are duly appointed and qualified. *Opinion of April*, 1835, 2 Op. 713.

118. The rule is otherwise with officers elective and judicial; for such cannot exercise their functions after the expiration of the terms of service for which they were elected or appointed. *Ibid.*

119. On the expiration of the commission of a Navy agent, the office becomes vacant unless a new appointment is made. Opinion of Attorney-General Butler, in case of Leonard M. Parker (2 Op. 714), questioned. *Opinion of July* 11, 1865, 11 Op. 286.

120. The term of the secretary of the Territory of New Mexico is limited to four years, and after its expiration the incumbent of the office has no right to exercise its functions. *Opinion of March* 12, 1867, 12 Op. 130.

121. The right of an incumbent of any office

tablished under the Government of the nited States to continue therein after the exration of his term until the appointment of s successor, depends upon whether Congress s thus provided; so that where Congress has t authorized the officer to hold over, his inmbency must be deemed to cease at the end his term, though no appointment of a sucssor may then be made. Opinion of Attory-General Butler (2 Op., 714) disapproved. *pinion of June* 17, 1873, 14 Op. 260.

122. *Semble* that even if an officer, in such se, were authorized to hold over after the xpiration of his term, his resignation, if acepted, would discharge him from office, though successor might not be appointed when the esignation, by its terms, takes effect. *Ibid.*

VI. Performing Duties of more than one Office.

123. There is no provision of the Constitution, or of any statute, which forbids the perormance of the duty of two distinct offices by he same person. *Opinion of Jan.* 17, 1857, 8 p. 325.

VII. Plurality of Offices.

124. The Secretary of the Treasury may appoint a person as clerk to aid in the supervision of the coast surveys, with salary of $400 per annum, who at the same time holds the office of clerk in the Treasury Department, with a salary of $1,400 per annum; and the accounting officers should pay such salary. *Opinion June* 7, 1851, 5 Op. 765.

125. The provisions of the acts of 3d March, 1839, chap. 82; 23d August, 1842, chap. 183; and 30th September, 1850, chap. 90, do not prohibit a person from holding two compatible offices at the same time. They were intended to prevent arbitrary extra allowances in each particular case; but do not apply to distinct employments with salaries affixed to each by law, or by regulations. *Ibid.*

126. *Semble* that a person may hold two distinct offices under the Government and receive the salaries of both. *Opinion of Aug.* 18, 1853, 5 Op. 80.

127. The marshal of the United States for the southern district of Florida cannot at the same time hold the office of commercial agent of France. *Opinion of April* 3, 1854, 6 Op. 409.

128. By decision of the Supreme Court (in the case of Converse *v.* United States, 21 How., 463), a person holding two compatible offices or employments under the Government is not precluded from receiving the salaries of both by anything in the general laws prohibiting double compensation; but the prohibition in those laws extends to every case where the duties for which extra compensation is claimed are performed without a regular appointment authorized by law. *Opinion of Nov.* 24, 1860, 9 Op. 508.

129. The offices of register of wills for Washington County, and commissioner of police, or the offices of member of the levy court, commissioner of police, and collector of internal revenue for the District of Columbia, under the rule adopted in the case of the United States *v.* Converse (21 How., 463), may be held, and the emoluments thereof may be received, by one person at the same time. *Opinion of Jan.* 14, 1863, 10 Op. 446.

130. A person holding two compatible offices or employments under the Government is not precluded from receiving the salaries of both. *Opinion of Aug.* 10, 1868, 12 Op. 459.

VIII. Eligibility.—Disability.

131. The temporary absence of the governor from the State does not create a disability, under the constitution of Kansas, which devolves his functions on the lieutenant-governor. *Opinion of June* 11, 1862, 10 Op. 276.

132. General E. S. Parker (an Indian) not considered disqualified from holding the office of chief of a Bureau, under the Constitution and laws of the United States. *Opinion of April* 12, 1869, 13 Op. 27.

IX. Suspension.—Removal.

133. The power of the President to dismiss an officer from the public service, without the consent of the Senate, was affirmed by Congress soon after the adoption of the Constitution, and has since received the sanction of every department of the Government. *Opinion of July* 14, 1847, 4 Op. 603.

134. The President has constitutional authority to remove the chief justice of the Territory of Minnesota from office. *Opinion of Jan.* 23, 1851, 5 Op. 288.

135. In case of appointments and removals by the President, where the removal is not by

direct discharge, or an express vacating of the office by an independent fact, but merely by the operation of a new commission or appointment, then the virtue of the old commission ceases only when notice of the new commission is given to the outgoing officer, either by the President, or by the new officer exhibiting his commission to the old, or by other sufficient notification. *Opinion of Aug.* 30, 1853, 6 Op. 87.

136. Under the act of January 31, 1823, chap. 9, the President has power to dismiss a defaulting officer without first giving him notice of the charges reported against him. *Opinion of March* 22, 1859, 9 Op. 313.

137. The power to remove inspectors of hulls and boilers appointed under section 9 of the act of August 30, 1852, chap. 106, is vested in the Secretary of the Treasury, and not in the designating board. *Opinion of March* 14, 1862, 10 Op. 204.

138. The appointment of a person to the office of Secretary of the Territory of New Mexico, and delivery to him of the commission, operate as a removal of the incumbent. *Opinion of March* 12, 1867, 12 Op. 130.

139. Views upon the subject of the removal of Governor Ballard, of Idaho. *Opinion of July* 30, 1867, 12 Op. 227.

140. *Advised* that the President should execute a formal act of removal in the case of an officer within the tenure-of-civil-office act, sentenced to and imprisoned in the penitentiary for crime, where a resolution of the Senate had been passed advising and consenting to his removal. *Opinion of Aug.* 21, 1868, 12 Op. 468.

141. The mere designation by the Postmaster-General of a special agent of the Post-Office Department to take charge of a post-office, which at the time was held by a postmaster who had been appointed thereto by and with the advice and consent of the Senate, is not, either expressly or by just implication, a compliance with the terms and conditions upon which, by the provisions of the 2d section of the tenure-of-office act of March 2, 1867, chap. 154, the President was authorized to suspend an officer. *Opinion of Jan.* 20, 1870, 13 Op. 207.

142. Accordingly, where, after such designation of a special agent, a postmaster was able, ready, and willing to perform his official duties: *Held* that he was entitled to the compensation provided by law. *Ibid.*

143. Consistently with the spirit and purpose of the tenure-of-office-acts of March 2, 1867, chap. 154, and April 5, 1869, chap. 10, the President may revoke the suspension of an officer and reinstate him in the functions of his office, after the rejection by the Senate of a nomination to fill his place. *Opinion of April* 2, 1870, 13 Op. 221.

144. The word *suspended*, as used in those acts, imports that the person suspended is still the incumbent of the office, and that the interruption of his performance of its duties is temporary and provisional. *Ibid.*

145. The effect of revoking the suspension is only to restore to his former condition the actual possessor of the office, to whose removal the Senate has given no advice or consent. *Ibid.*

146. Under the tenure-of-office acts (which, in the opinion expressed, are assumed to be applicable to foreign ministers and consuls, though this is regarded as doubtful upon authority, and perhaps upon principle also), the President may suspend the incumbent of such mission until the end of the next session of the Senate, and designate some suitable person to perform the duties of the suspended officer in the mean time. *Opinion of Aug.* 4, 1870, 13 Op. 301.

147. Where an officer, during the recess of the Senate, was suspended and another person designated to fill the office till the end of the next session of the Senate, who was afterward nominated for the office during such session, but the Senate adjourned without acting upon the nomination: *Held* that the failure of the Senate to confirm the nomination operated to restore the suspended officer; yet *held*, also, that the latter may be again suspended by the President for any causes which in his judgment are sufficient, without regard to the time when such causes began to exist. *Ibid.*

148. *Semble* that, in the case of a foreign mission, the holder of the office is not displaced by the appointment of a successor until the latter enters upon his duties. *Ibid.*

149. A postmaster, having been commissioned for four years from April 20, 1867, was suspended by the President on the 5th of May, 1869, and another person designated to perform the duties of the office, who, at the ensuing session of the Senate, was nominated for the place, but was rejected by the Senate on the 5th of July, 1870, too late for the President to

ce another nomination at that session: d that as the term of the suspension ended h the session of the Senate, without the re-al of the suspended officer, or the appoint-nt of a successor by and with the advice consent of the Senate, he thereby became stated in the office under his unexpired mission. *Opinion of Aug.* 8, 1870, 13 Op.

50. A suspension, in its very nature, is tem-ary, and the necessary effect of a termina-n of the suspension is a reinstatement of the pended officer, where the law has not other-e provided. *Ibid.*

151. But an officer who has been suspended, d is afterward thus reinstated, may be again spended by the President during the recess the Senate. *Ibid.*

152. The suspension of the Commissioner of ternal Revenue under the tenure-of-office act April 5, 1869, chap. 10, and the designation the President of the First Deputy Commis-oner of Internal Revenue to perform the ties of the suspended officer, did not vacate e office of First Deputy Commissioner; but e latter is entitled, as long as he performs the mmissioner's duties under the President's signation, to the salary of the Commissioner ly. *Opinion of Aug.* 25, 1871, 13 Op. 512.

153. An order of the President suspending officer, under section 1768 Rev. Stat., takes fect upon due notice thereof to the officer, less by the terms of the order it is to take fect at a stated time after notice. Receipt of e order by the officer is due notice. *Opinion Nov.* 20, 1875, 15 Op. 62.

154. Where an officer is suspended, but con-nues afterwards to perform the duties of the fice (there being no one at the time author-ed to enter upon the performance of such ties), his acts are those of an officer *de facto*, id are valid so far as they concern the interests the public. *Ibid.*

155. Power of the President respecting the spension of civil officers appointed with the nsent of the Senate, and his duty in regard the nomination of persons in the place of spended officers, and also in regard to the lling of vacancies in civil offices happening luring a recess of the Senate, under the pro-isions of sections 1768 and 1769 Rev. Stat., stated. *Opinion of Oct.* 4, 1877, 15 Op. 376.

156. No duty is devolved upon the President to send in nominations to the Senate in place of suspended officers, or to fill vacancies, unless that body shall continue in session for thirty days. *Ibid.*

157. Where no nomination in place of a suspended officer has been sent in, and the Senate adjourns, or, a nomination having been sent in, the Senate adjourns without confirming it, the officer suspended thereupon becomes reinstated, but he may be again suspended by the President, as before. In the case of a *vacant* office, under like circumstances, the office would be in abeyance upon the adjournment of the Senate. *Ibid.*

158. The President, in nominating a person to the place of a suspended officer, need not give any reasons for the suspension. *Ibid.*

159. Where an officer has been suspended during a recess of the Senate and another person designated to perform his duties, under section 1768 Rev. Stat., the President may at any time revoke the suspension and thus reinstate the officer. *Opinion of Oct.* 13, 1877, 15 Op. 381.

X. Resignation.

160. A resignation, to the President, of a director of the Bank of the United States is an inchoate act. It does not become complete and efficient until the same has been accepted expressly, or impliedly by the appointment of another. *Opinion of Feb.* 2, 1831, 2 Op. 406.

161. An act of resignation by an officer of the Navy while insane is a nullity. *Opinion of May* 8, 1854, 6 Op. 456.

162. The tender of the resignation of an officer and its acceptance when he was insane, may be treated as a mere nullity by the authority which accepted it. *Opinion of April* 12, 1862, 10 Op. 229.

163. The insanity may be proved by any evidence which is satisfactory to the officer having authority to appoint and remove, and need not be established by a finding in a judicial proceeding. *Ibid.*

164. Where an officer, within the "tenure of civil office act," tenders in writing to the President the resignation of his office, "to take effect upon the qualification of my (his) successor, nominated by yourself (the President) and confirmed by the Senate," his tenure of the office can be regarded as relinquished only upon and after the event which is named

in his communication. *Opinion of Aug.* 10, 1868, 12 Op. 444.

165. Such a communication has no official or legal force whatever, in placing at the discretion or disposition of the President any power over the office which he did not possess without it. *Ibid.*

166. An indorsement upon such a communication by the President, declaring his acceptance of "the resignation," has no operation upon the position of the officer as respects its vacancy, or the President's present authority to fill it. *Ibid.*

167. Where a person holding the office of collector of customs resigned during a session of the Senate, and was sworn in and took his seat as a member of the Senate of the United States: *Held* that the office of collector became vacant, although his resignation had not been previously accepted. *Opinion of Aug.* 17, 1868, 12 Op. 449.

168. Where a paper addressed to the President, containing the resignation of a judge to take effect on a future day, was placed in the hands of a third party to be transmitted to the President, but before the day arrived the resignation was revoked: *Held* that the paper, though subsequently delivered to the President by the individual in whose hands it had been placed, had no effect as a resignation. *Opinion of June* 2, 1869, 13 Op. 77.

169. In October, 1872, C., then a surveyor of customs, tendered his resignation, which was subsequently accepted by the President, to take effect on the 31st of January, 1873, about two months before the expiration of C.'s term. The appointment of C.'s successor in office was not made until the last of March, 1873. C., however, did not personally discharge any of the duties of surveyor after January 31, 1873; but, from the latter date until his successor took possession of the office, its duties were performed by the deputy surveyor whom he had previously constituted. Claim is now made by C. for the salary and emoluments of the office for that period. *Held* that, by reason of the tender and acceptance of his resignation. C. ceased to be surveyor on the 31st of January; that the authority of his deputy to act in that capacity thereupon terminated; and that the claim mentioned has no validity. *Opinion of June* 17, 1873, 14 Op. 260.

170. That a public office may be vacated by resignation is not only established by long and familiar practice, but is, moreover, recognized by positive law. *Ibid.*

171. A resignation may be effected by the concurrence of the officer and the appointing power; its essential elements being an intent to resign on the one side and an acceptance on the other. The principle upon which it rests is agreement. *Ibid.*

172. Hence, to perfect a resignation, nothing more is necessary than that the proper authority accept the offer to resign; it then becomes efficient for the end intended, and operates to relieve the incumbent either immediately or on the day specially fixed according to its terms. *Ibid.*

173. When a resignation once takes effect the official relations of the incumbent are *ipso facto* dissolved; and he no longer has any right to, or hold upon, the office. *Ibid.*

174. In February, 1876, S., being then minister to England, tendered his resignation, to take effect on the arrival of his successor. A few days thereafter he asked for leave of absence to return to the United States, which was granted. Subsequently the Secretary of State addressed a letter to him at London, informing him of the acceptance of his resignation; but before this letter reached London he had left there for the United States. A nomination having been sent to the Senate in place of S., "resigned": *Held* that S. (being now in the United States) will cease to be minister on the confirmation and appointment of his successor. *Opinion of April* 12, 1876, 15 Op. 91.

XI. Abeyance.—Vacancy.

175. The office of minister to Venezuela passed into "abeyance" under the third section of the act of March 2, 1867, chap. 154, by the adjournment of the Senate on July 27, 1868, without having acted on the nomination of Mr. Stillwell thereto, made to that body on January 28, 1868. *Opinion of Aug.* 7, 1868, 12 Op. 457.

176. Whether an office subsists and is vacant, or the office itself is abrogated, while the predicament of "abeyance" continues, is a question of verbal rather than of substantial distinction. *Ibid.*

177. The predicament of "abeyance," in its application to an office made vacant by resig-

ion during a session of the Senate, and not
:d at the expiration of that session by a full
ointment, by and with the advice and con-
t of the Senate, can only arise by the expi-
on of the *next* session of the Senate without
t body's having concurred in a full appoint-
nt to the office. *Opinion of Aug.* 17, 1868,
)p. 449.

178. Section 2549 Rev. Stat. provides for
› appraisers at the port of Baltimore; but,
ler section 2950 Rev. Stat., an appraise-
nt may be made by any one of them: *Held*
t, in case of vacancy in the office of one of
appraisers of that port, there is no duty
volving upon the President to provide an
umbent for it, if, in his opinion, it is unnec-
ary to do so. *Opinion of Feb.* 20, 1879, 16
). 266.

179. Section 1768 Rev. Stat. recognizes the
istence of a discretion in the President to not
ll an office which has become vacant, where
i his judgment it is unnecessary in order to
xecute the laws. The office is not thereby
bolished, but is merely left unfilled. *Ibid.*

XII. Office of Trust.

180. The positions held by the commis-
ioners appointed by the President for the
Centennial Exhibition are offices of "trust,"
within the meaning of section 9, article 1, of
the Constitution. *Opinion of Jan.* 20, 1877,
15 Op. 187.

OFFICER.

See also OFFICE.

1. All collections of objects of natural history and the like, and all field-notes or other like local information, taken or obtained by any public officer, civil or military, *in the line of his duty*, belong to the Government. *Opinion of June* 26, 1854, 6 Op. 600.

2. But officers of the Government, civil or military, may lawfully make collections and take notes for their own use, provided the same be done without neglect of public duty or expense to the Government, and provided, also, that it be done without violation of superior order in their respective departments. *Ibid.*

3. Public officers are indictable at common law for acts of malfeasance in office committed in the District of Columbia. *Ibid.*

4. The acts of an officer *de facto* are valid in all collateral proceedings to which he is not a party. *Opinion of Nov.* 2, 1858, 9 Op. 251.

5. The acts of an officer *de facto* are always held to be good where the public or third parties are concerned; and the legality of his appointment can never be inquired into except upon *quo warranto*, or some other proceeding to oust him, or else in a suit brought or defended by himself, which brings the very question whether he was an officer *de jure* directly in issue. *Opinion of June* 12, 1860, 9 Op. 432.

6. W. having been constituted an attorney by certain Indians to collect from the Government claims for back pay and bounty due them for military services, he was, upon executing a bond to the United States conditioned for the faithful performance of his duties as such attorney, and filing the same in the Interior Department, also empowered as a special agent of that Department, without compensation (except such fees as were then or might thereafter be authorized by said Department), to collect and pay over to the said Indians their claims. The appointment as such special agent was not made in pursuance of any law of Congress: *Held* that W. did not become, by virtue of that appointment, or by the execution of the bond, an officer of the United States within the meaning of section 16 of the act of August 6, 1846, chap. 90, and subject to prosecution thereunder; but *advised* that the Secretary of the Interior may proceed by civil action on the bond for any breach of its conditions, and seek the recovery of whatever damages, if any, the Government has thereby sustained. *Opinion of Dec.* 21, 1871, 13 Op. 588.

7. Judicial proceedings, by and in behalf of certain private parties, having been had before H. in the consular court at Alexandria, Egypt, while he held the office of consul-general there, against one D., the latter afterward instituted a suit against H. in the supreme court of the District of Columbia, complaining that he, H., acted in bad faith, maliciously, and without authority of law in said proceedings, whereby the plaintiff sustained great damage, &c. H. informed the Department of State of the pendency of the suit, asking that the United States assume the defense thereof: *Advised* that, as the proceedings against D. were not promoted

together as such. *Opinion of May* 8, 1873, 14 Op. 233.

12. Regarding them in that light, the requirement contained in the former, that "one-half of the compensation for services rendered for the Government" by that company should be applied to the payment of the bonds issued by the Government thereto, embraces not only railroad and telegraph service, but bridge service also. *Ibid.*

13. The second section of the act of March 3, 1873, chap. 266, extends to the road of the same company over the bridge at Omaha; and when the circumstances exist which bring it into operation—viz, payment of interest by the Government and failure to reimburse by the company—all compensation on account of freight and transportation over the bridge is to be withheld; but when those circumstances do not exist, the provision in the act of 1864, requiring a reservation of one-half compensation, becomes applicable to such service. *Ibid.*

14. Accordingly, one-half of the compensation for transportation performed for the Government by said company over its bridge at Omaha should be withheld and applied to the payment of the bonds issued by the Government to the company, except in the case provided for by the second section of the act of 1873, when all compensation for such service must be withheld. *Ibid.*

15. The Secretary of the Treasury has authority, under the second section of the act of March 3, 1873, chap. 226, to withhold payments for transportation services rendered by the Sioux City and Pacific Railroad Company to the United States over the Fremont, Elkhorn, and Missouri Valley Railroad, a road *leased* by that company, in case of default on the part of the company to reimburse the Government for interest paid upon the bonds of the United States issued thereto. *Opinion of Feb.* 24, 1874, 14 Op. 375.

16. Inquiry being made whether the Union Pacific Railroad Company should be paid the compensation for mail transportation fixed by Congress for railroads generally, or should be paid as compensation therefor what is paid by private parties for service of a similar kind, and also whether that company is subject to the reduction of compensation provided in the act of July 12, 1876, chap. 179: *Advised* that (until a final and authoritative judicial determination of the questions raised) the Postmaster-General apply the same rules in dealing with that company which Congress has made applicable to railroad companies in general. *Opinion of Feb.* 16, 1877, 15 Op. 610.

17 Section 6 of the act of July 1, 1862, chap. 120, leaves the United States free, as against the Union Pacific Company, to resort to either the general rights which they have against all railroad companies or the special rights therein provided. *Ibid.*

18. Interest on the bonds issued by the Union Pacific Railroad Company under the act of February 24, 1871, chap. 67, commonly known as the "Omaha bridge bonds," is not to be deducted from the gross earnings of that company in ascertaining its net earnings. *Opinion of Jan.* 7, 1879, 16 Op. 240.

19. Under section 2, act of May 7, 1878, chap. 96, all compensation due for transportation for the Quartermaster's Department performed over such portions of the Union and Central Pacific Railroads as were built with the aid of Government bonds should be retained. And *advised* that all compensation due to the same roads (they being indebted to the United States upon subsidy bonds) for such transportation performed over those portions of roads owned, leased, controlled, and operated thereby, which were not built with the aid of Government bonds, be also retained, so that the question involved as to such portions of roads can be judicially determined. Same advice, on similar grounds, given in regard to compensation due for transportation performed over the Kansas Pacific, Denver Pacific, and Union Pacific consolidated, and in regard to compensation due for transportation performed over the Sioux City and Pacific and the Central Branch Union Pacific Railroads, and over lines owned, leased, controlled, and operated thereby. *Opinion of June* 11, 1880, 16 Op. 517.

20. Under section 5260 Rev. Stat., all compensation due for transportation for the Quartermaster's Department performed over the Kansas Pacific Railroad (as well over that portion which was not as over that portion which was built with the aid of Government bonds) should be withheld. *Ibid.*

PARDON.

1. In view of the facts appearing in the case of John Mitchell, charged with robbing the mail, &c.: *Advised* that the consideration of the application for pardon be postponed until after the trial of petitioner. *Opinion of March* 9, 1795, 5 Op. 687.

2. The district attorney may assure a pardon to a counterfeiter who shall disclose his accomplice and produce the plates and counterfeited paper. A mere disclosure of the name of the accomplice seems not to be enough. *Opinion of Nov.* 18, 1797, 1 Op. 77.

3. The President may mitigate a sentence of death pronounced by a naval court-martial by substituting a milder punishment in its stead. *Opinion of Jan.* 4, 1820, 1 Op. 327.

4. The power of absolute pardon given to the President by the Constitution includes the power of issuing a conditional one. Yet there is great danger that conditional pardons may result as absolute ones from the difficulty of enforcing conditions after the offender shall have been released from the custody of the law. *Opinion of March* 30, 1820, 1 Op. 342.

5. The condition, in order to be effectual for any purpose, must be such that a resort need not be had to the power of arrest in the original case. *Ibid.*

6. Pardons may be issued before conviction. They presuppose an offense, and nothing more; and there is neither any constitutional nor legal provision which requires them to be preceded by a trial, a verdict, or a sentence. They may be founded on a confession in writing. *Ibid.*

7. Where the accused—who has been convicted of piracy, and the questions of law arising upon the facts in the case were referred to the Supreme Court and decided against him—sets forth in his petition for pardon an *ex parte* statement of facts which, if true, would show him to have been improperly convicted, the President is neither required nor authorized to inquire into the truth of the alleged facts, or to grant a pardon on the assumption that they are true. To do either would be an abuse of the pardoning power. *Opinion of May* 9, 1820, 1 Op. 359.

8. The President advised to withhold a pardon in a particular case on grounds set forth in the opinion. *Opinion of Jan.* 31, 1821, 5 Op. 729.

9. The President may grant a conditional pardon provided the condition be compatible with the genius of our Constitution and laws. *Opinion of Aug.* 16, 1821, 1 Op. 482.

10. Where an assistant postmaster was convicted of taking the property of another, and it appears that he has become reformed, a pardon is recommended. *Opinion of July* 21, 1829, 2 Op. 249.

11. It is generally inexpedient for the President to grant a pardon before the applicant is tried. Where an applicant was indicted for murder, the fact that his trial cannot take place at the first term of court to be held after the indictment was found is not sufficient ground for a pardon. *Opinion of Oct.* 12, 1829, 2 Op. 275.

12. The pardoning power is coextensive with the power to punish, and is general and unqualified, except only in the cases of impeachments and proceedings for contempts; and it consequently includes the power of remission of fines, penalties, and forfeitures under the revenue laws. The power, however, does not go to the length of making restitution of fines, penalties, and forfeitures after they have been actually paid into the Treasury. *Opinion of March* 17, 1830, 2 Op. 330.

13. The power of the Executive to grant reprieves and pardons extends to the remission of fines, penalties, and forfeitures, and costs in criminal cases, and may be exercised in degrees at different times, at the discretion of the President. *Opinion of Feb.* 16, 1839, 3 Op. 418.

14. And the same power is possessed by the President over a judgment, after security for its payment shall have been given as well as before. *Ibid.*

15. And it extends to fines imposed upon individuals for conduct adjudged to be contempts of the circuit courts. *Opinion of Feb.* 27, 1841, 3 Op. 622.

16. Jenkins, a slave, imprisoned under a sentence of the circuit court for the county of Washington, in the District of Columbia, for a second offense against the act of March 2, 1831, chap. 37, is a proper subject for the exercise of the pardoning power. *Opinion of Aug.* 25, 1843, 4 Op. 237.

17. The act includes "every person," and

therefore makes no distinction between slvesa and free persons who may offend against its provisions. *Ibid.*

18. The pardoning power authorizes the President to remit a fine imposed upon a citizen for contempt in neglecting to serve as a juror. *Opinion of April* 15, 1844, 4 Op. 317.

19. There being no decisive proof of the guilt of the convict, concurrent representations of various and highly respectable persons as to his innocence may properly be taken into consideration in determining the propriety of clemency, and, if satisfactory, will abundantly justify the exercise of the pardoning power. *Opinion of May* 3, 1844, 4 Op. 325.

20. In mitigating the sentence of a naval court-martial the President may substitute a suspension for a term of years without pay for an absolute dismissal from the service, as suspension is but an inferior degree of the same punishment. *Opinion of Sept.* 18, 1845, 4 Op. 433.

21. But the power does not extend to the substitution of another punishment for that decreed by the court. Therefore the President cannot suspend the pay of an officer under sentence of court-martial whose pay was not suspended by the court. *Opinion of Oct.* 16, 1845, 4 Op. 444.

22. The pardoning power, except in the single instance in which it was withheld by the Constitution, is co-extensive with the punishing power, and applies as well to punishments imposed for contempt of the process of the United States as for the violation of any other law. *Opinion of Nov.* 28, 1845, 4 Op. 458.

23. As there is reason to doubt the guilt of the Indian See-see-sah-ma, who is under sentence of death for murder, his case presents a very proper occasion for the exercise of Executive clemency, either by general pardon or by a commutation of the punishment to which he has been sentenced. *Opinion of May* 10, 1851, 5 Op. 368.

24. The sentence of the Indian See-see-sah-ma having been commuted to imprisonment for life in the penitentiary, he stands in precisely the same legal condition as if he had been sentenced by the court to imprisonment for life in the penitentiary of the State of Missouri. *Opinion of May* 28, 1851, 5 Op. 370.

25. It is not competent for the President, in the exercise of the pardoning power, to remit pecuniary penalties attached to an offense, unless those penalties accrue to the United States. *Opinion of April* 22, 1852, 5 Op. 532.

26. The punishment in the District of Columbia for the unlawful transportation of slaves, by the laws of Maryland applicable to the District, is by fine, which the statute appropriates, and cannot be remitted by the President. *Ibid.*

27. The President, in the exercise of the pardoning power vested in him by the Constitution, may remit penalties and fines adjudged in the circuit court of the District of Columbia against parties convicted of aiding the escape of slaves from their masters and discharge them from imprisonment; or he may merely discharge them from imprisonment without remitting the fines. *Opinion of Aug.* 4, 1852, 5 Op. 580.

28. The President of the United States has the constitutional power to pardon as well before trial and conviction as afterwards; but it is a power only to be exercised with reserve, and for exceptional considerations. *Opinion of April* 15, 1853, 6 Op. 20.

29. The appointment of an officer of the Marine Corps to a new commission is constructive pardon of a previous sentence pronounced but not yet executed. *Opinion of Sept.* 20, 1853, 6 Op. 123.

30. The pardoning power of the President extends to all cases of penalties and forfeitures, as well as other punishment, provided by the acts of Congress regulating the transportation of passengers in merchant vessels. *Opinion of March* 24, 1854, 6 Op. 393.

31. After return of execution on *scire facias* against the surety of an absconding criminal charged with violation of acts of Congress, the only mode of relieving the surety is by exercise of the pardoning power of the President. *Opinion of April* 3, 1854, 6 Op. 408.

32. The governor of the Territory of Utah has power to reprieve, but not to pardon, persons indicted and convicted for crime against the United States. *Opinion of April* 14, 1854, 6 Op. 430.

33. Whether the President can, through the exercise of the power to pardon, lawfully discharge a prisoner confined for non-payment of a penalty accruing as indemnification to the individual injured by the prisoner's act, *dubitatur*. *Opinion of July* 19, 1854, 6 Op. 615.

34. The order of the Secretary of the Navy an officer, while under sentence of suspension, to attend a court-martial as a witness, does ot operate as a constructive pardon. *Opinion Sept.* 12, 1854, 6 Op. 714.

35. The President of the United States alone as the power to pardon offenses committed in Territory in violation of acts of Congress. *pinion of Oct.* 19, 1855, 7 Op. 561.

36. The President has no power, by a supplemental or special pardon, to relieve a Federal nvict of legal or political disabilities imposed such convict by the laws of one of the States, here a general pardon does not of itself reove the disability. *Opinion of July* 9, 1856, Op. 760.

37. The constitutional power of the Presint to pardon extends to all the elements of e subject-matter, including as well pecuniary nalties as other methods of punishment of y Federal offense, except in the case of imeachment, and it cannot be controlled or curiled by act of Congress. *Opinion of Jan.* 1, 57, 8 Op. 281.

38. But when a pecuniary penalty, accrug to the United States, has been actually id into the Treasury, although it may be reitted of right by the President, still by reason constitutional prohibition, which is coequal force with the constitutional power to parn, the amount of the penalty cannot be awn from the Treasury without appropriaon by act of Congress. *Ibid.*

39. A person disfranchised as a citizen, by nviction for crime, under the laws of the nited States, can be restored to his rights by pardon issued before or after he has suffered e other penalties incident to his conviction. *pinion of Sept.* 22, 1860, 9 Op. 478.

40. The President's remission of a fine after has been paid is of no effect. *Opinion of n.* 3, 1861, 10 Op. 1.

41. The power of the President to pardon fenses against the United States does not nbrace any case of forfeiture, loss, or condemation, not imposed by law as a punishment r an offense. He cannot, by virtue of that ant of power, surrender or give away the ecuniary or proprietary rights and interests f the United States. *Opinion of Feb.* 9, 1863, 0 Op. 452.

42. The powers of the President, in this repect, cannot be enlarged by analogy to the power of an English King, as the powers of the two have their origin and mode of existence in different and opposite principles. *Ibid.*

43. In some of the States the governors have power, by constitutional grant, to remit fines and forfeitures, as well as to grant reprieves and pardons. *Ibid.*

44. The condemnation of a vessel and cargo, in a prize court, is not a criminal sentence. No person is charged with an offense; and so, no person is in a condition to be relieved and reinstated by a pardon. *Ibid.*

45. The constitutional power of the President "to grant reprieves and pardons for offenses against the United States, except in cases of impeachment," considered and commented on. *Opinion of May* 8, 1865, 11 Op. 227.

46. The effect and operation of a pardon issued by the President stated. *Opinion of Nov.* 2, 1866, 12 Op. 81.

47. A pardon by the President will restore an officer, whose rank has been reduced by sentence of a court-martial, to his former relative rank according to the date of his commission. *Opinion of Jan.* 22, 1869, 12 Op. 547.

48. Applications for pardon are addressed to the President, who may act on them upon his own examination simply, or, before acting thereon, may refer them to any of the Executive Departments for advice. *Opinion of March* 23, 1872, 14 Op. 20.

49. An application having been with that view referred by the President to the Secretary of War, and the latter having afterward submitted the same to the Attorney-General for his opinion thereon, the Attorney-General declined to give an opinion on the ground that to do so would be merely to advise the Secretary as to what he should advise the President. *Ibid.*

50. Where a person convicted of a crime against the United States was sentenced to fine and imprisonment, and subsequently received an unconditional pardon from the President, but previous thereto had paid the amount of the fine to the marshal, by whom it was deposited in court, where it still remains: *Held* that the fine was remitted by the pardon, and that the money should now be restored to the person pardoned. *Opinion of June* 28, 1872, 14 Op. 599.

51. A pardon by the President works a re-

mission of a pecuniary penalty already paid, unless the money has actually passed into the Treasury (overruling the decision in 10 Op. 1). *Ibid.*

52. The President may grant a conditional pardon, and he may remit a part of the penalty or punishment without remitting the whole. *Opinion of Oct.* 3, 1872, 14 Op. 124.

53. Hence he can pardon a deserter so as to re-enfranchise him (*i. e.*, remove the disabilities imposed by section 21 of the act of March 3, 1865, chap. 79), and at the same time make the pardon conditional upon his not becoming thereby entitled to any moneys forfeited; and a condition of this sort would exclude any right to the pay referred to in the joint resolution of March 1, 1870 (No. 18). *Ibid.*

54. M., having been convicted in a Federal court of an offense against the United States, was, in April, 1876, sentenced by the court to pay a fine of $1,000. He paid the fine and subsequently applied for a pardon, which was granted January 27, 1877, at which time the money received in payment of the fine had not been covered into the Treasury. The pardon was a full and unconditional one, but contained no clause of restitution: *Held* that if the money paid in satisfaction of the fine has not yet been covered into the Treasury, but still remains under the control of the Executive, the same should be restored to M. *Opinion of April* 29, 1878, 16 Op. 1.

55. Where the pardon is full and unqualified, express words of restitution in the pardon are not needed to entitle its recipient to restitution. The right thereto results by the mere *effect* of such a pardon. *Ibid.*

56. The organic act of Dakota Territory (see section 2, act of March 2, 1861, chap. 239; also section 1841 Rev. Stat.) confers upon the governor the power to pardon offenses against the laws of the Territory without any restriction or limitation whatever; and this power the Territorial legislature cannot limit or restrict, nor can its exercise by the governor be in any respect controlled thereby. *Opinion of June* 3, 1878, 16 Op. 28.

57. Certain provisions in the Revised Code of Dakota, 1877, namely, sections 544, 545, 547, 548, 549, and 551, considered in connection with the pardoning power of the governor, some of which (sections 544, 545, 547, and 551) are deemed objectionable, as being in conflict with the organic act, while others (sections 547, 548) are regarded as unobjectionable. *Ibid.*

PARTNERSHIP ASSETS.

It is a settled rule that the assets of a partnership are not to be applied to the payment of the private debts of either partner until after the partnership debts are discharged; and this is more emphatically the case where the private debts were contracted after the dissolution. *Opinion of Aug.* 26, 1837, 3 Op. 257.

PASSENGER LAWS.

1. Vessels propelled by steam, and employed in the transportation of passengers by sea between Panama and San Francisco, are within the provision of the acts of Congress regulating the transportation of passengers in merchant vessels. *Opinion of March* 24, 1854, 6 Op. 393.

2. In cases of mere forfeiture or other penalties accruing to the Treasury under the acts of Congress relative to the transportation of passengers, the Secretary of the Treasury may remit, as in similar cases arising under the revenue laws. *Opinion of May* 31, 1854, 6 Op. 488.

3. This does not exclude the general power of the President to pardon; and where, under the same passenger laws, personal punishment is inflicted, the case can be reached only through the pardoning power of the President. *Ibid.*

4. The Secretary of the Treasury, and not the President, has power to remit the forfeiture of a vessel incurred by violation of the second section of the act of July 7, 1838, chap. 191, for the better security of the lives of passengers on steam vessels. *Opinion of Oct.* 27, 1864, 11 Op. 122.

5. A judgment entered on a bond given and accepted as a substitute for a vessel seized for a violation of the act of July 7, 1838, chap. 191, is incapable of being affected by any action of the President, who cannot invalidate such judgment, or in any way impair its force and effect against the stipulators. *Ibid.*

PASSPORT.

assport issued by an unauthorized
bstantially in the form used by the
partment is within the letter of sec-
f the act of August 18, 1856, chap.
inion of June 22, 1859, 9 Op. 350.

prohibition contained in that act is
ned to the issuing and verifying of
ports or certificates in foreign coun-
applies equally to State and Federal
ries residing there. *Ibid.*

ssport cannot be issued to any other
tizen of the United States. *Ibid.*

re is no form of certificate in the na-
passport which can be issued lawfully
e officer. *Ibid.*

he act of March 3, 1863, chap. 79, the
of State has power to issue passports
ss of persons liable to military duty
ws of the United States. *Opinion of*
863, 10 Op. 517.

re application was made to the De-
of State for passports for five persons
in the island of Curaçoa, four of
ere born in that island, and one in
d of St. Thomas, and all of whom
dren of native citizens of the United
it it did not appear that any of the
s had ever resided or intended to re-
he United States: *Advised* that the
s are not entitled to passports.
f June 12, 1869, 13 Op. 90.

ble that the granting of passports is
atory in any case, but is only per-
here not prohibited by law. *Ibid.*

panish subject by birth was natural-
he United States in February, 1876,
upon his son, aged twenty, who was
the island of Cuba, applied to the
partment for a passport, stating that
esided in the United States for five
t that it was his intention to reside
untry of his nativity and engage in
there: *Held* that the son, being a
the time of the naturalization of his
ust be considered a citizen of the
States within the meaning of section
. Stat., and that no ground exists for
ling the issue of a passport to him on
e of nationality: *Held*, further, that
mstance that he intends to return to
le in the country of his birth does not
make him less entitled to a passport than if his intended destination were elsewhere. *Opinion of June* 7, 1876, 15 Op. 115.

9. The laws of the United States authorize the issue of passports to all citizens thereof, without distinction, whether native-born or naturalized. *Ibid.*

10. Accordingly, when a naturalized citizen applies for a passport, though with a view to traveling or residing in the country of his former nationality, his right to have the passport issued to him is just as obligatory upon the State Department as if he were a native-born citizen intending to go to the same country. *Ibid.*

PATENT OFFICE.

1. The Commissioner of the Patent Office is subordinate to, and subject to the control of, the Secretary of the Interior in the appointment and payment of such temporary clerks in that office as are authorized by law; and it makes no difference whether the money so to be disbursed is appropriated from fees or from the agricultural or any other fund. *Opinion of Dec.* 7, 1850, 5 Op. 283.

2. The necessary cases for the proper exhibition and arrangement of models and deposits intended for the Patent Office may be procured either by a contract for the whole or for part, or by purchases. *Opinion of Dec.* 28, 1852, 5 Op. 663.

3. The "patent fund" is expressly appropriated by law for payment of the salaries of officers and clerks, and other expenses of the Patent Office, and contracts for necessary expenses may be paid out of that fund without other appropriation. *Ibid.*

4. The salaries of all clerks in the Patent Office, like its other expenditures, are to be defrayed out of the patent fund. *Opinion of March* 4, 1854, 6 Op. 319.

5. The Patent Office made a deposit with S. W. C., bankers in Washington, subject to the draft of D. J. B., an agent of the office in London, upon the certificate of which B. B. C., bankers in London, advanced money to D. J. B., after which, and before repayment of the advances made by B. B. C., S. W. C. suspended payment: *Held* that the Patent Office must indemnify B. B. C. *Opinion of March* 13, 1855, 7 Op. 64.

PATENTS FOR INVENTIONS.

See also PATENT OFFICE.

I. *Generally.*
II. *Patentability of Invention.*
III. *Application.—Claim and Specification.—Caveat.*
IV. *Appeal from Commissioner.*
V. *Surrender and Reissue.*
VI. *Extension of Patent.*
VII. *Correction of Patent.*
VIII. *Assignment.*
IX. *Rights of Patentees.*

I. Generally.

1. Patents for inventions are confined to citizens of the United States. *Opinion of May* 26, 1802, 1 Op. 110.

2. Copies of specifications of a patented article may be furnished to any applicant. *Opinion of May* 20, 1812, 1 Op. 171.

3. A defendant, when sued by a patentee for an alleged violation of his patent right, has a right to a copy of the specifications for use on the trial, in order to enable him to show, if he can, that the specification does not contain the whole truth relative to the discovery, or that it contains more than is necessary to the effect desired; and as the law gives this privilege, it by implication gives the right of using the specification openly and publicly in court. *Opinion of June* 20, 1820, 1 Op. 376.

4. The established forms of jury trials in other cases cannot be departed from in patent cases, even though patentees may desire secrecy. *Ibid.*

5. It is not the duty of officers of the Patent Office to decide upon the legal effect of patents issued in conformity to the laws, nor to inform patentees of their rights. *Opinion of Nov.* 5, 1822, 1 Op. 575.

6. Patentees, their assigns, and persons sued for violation of patent rights, should, upon demand and payment of 25 cents per folio for the copy, be furnished with copies of specifications. But this privilege cannot be extended to citizens indiscriminately. *Opinion of* ——, 1825, 1 Op. 719.

7. It is not advisable to issue patents for newly-invented medicines, to bear the name of other popular medicines existing. In this case there can be no fair purpose for assuming a name so well known as "Anderson's cough drops." *Sic utere tuo ut alienam non lædas. Opinion of July* 26, 1828, 2 Op. 109.

8. The Department acts ministerially, rather than judicially, in granting patents for useful inventions. *Opinion of Aug.* 7, 1831, 2 Op. 455.

9. Copies of papers belonging to the Patent Office may not be made by individuals, but should be made by the proper officers, and fees received therefor and paid into the Treasury. *Ibid.*

10. No more clerks in the Patent Office can be employed and paid by the Secretary than are particularly authorized by the acts of Congress; nor can any higher allowance be made to them than is authorized by the act of April 20, 1818, chap. 87. *Ibid.*

11. As to what evidence will be deemed sufficient to authorize one man to act as the attorney of another, it is the subject of a rule that must be fixed by the Department. *Opinion of July* 5, 1833, 2 Op. 571.

12. Verifications and depositions in foreign countries, to be made under the provisions of the sixth section of the act of July 4, 1836, chap. 357, before patents can issue, should not be made before consuls, but before competent magistrates of the country where they shall be taken, and authenticated by the consul. *Opinion of May* 12, 1840, 3 Op. 532.

13. Any abrogation of oaths in the patent laws of England will not affect the question here; all conditions requisite to a patent in this country must be complied with according to the laws of Congress. *Ibid.*

14. Repayment of patent fees can only be made under the circumstances, and in the manner, and to the persons provided by law; and that justifies no repayment to any other than the party in whose name the deposit has been made, or to his duly constituted attorney. *Opinion of Oct.* 24, 1843, 4 Op. 268.

15. The authority vested in the Commissioner of Patents to issue patents exists in full force in each case for examination and final decision, until the patent shall have been actually issued. *Opinion of Dec.* 22, 1849, 5 Op. 220.

16. The Commissioner of Patents, in issuing letters patent of an alleged invention, does not warrant the same. Its validity remains open to inquiry, whether at the instance of

sons or of the United States. *Opin-*
24, 1856, 8 Op. 270.
tent for printing wooden mail-tags
ular machine and process is not in-
ere the tags are printed or produced
ent machine and process. *Opinion*
1874, 14 Op. 209.

ıtentability of Invention.

nts cannot be withheld on moral
ılating to the conduct of the appli-
nion of March 22, 1812, 1 Op. 170.
ay be questionable whether the sub-
one material for another be an in-
thin the sense of the patent law.
June 4, 1827, 2 Op. 52.
ases of doubt, however, it will be
vith the policy of the law to issue a
the petitioner, thereby giving him
ınity of trying the validity of his
d.
fact that anything for which a pat-
ht has been before discovered and
›reign country, though not patented
ed in any printed publication, is no
withholding a patent. *Opinion of*
348, 5 Op. 19.
discovery, by experiment or other-
ı particular natural substance will,
ate methods of administration, pro-
ıigned physiological or pathological
ıe human body is not a thing pat-
existing laws. *Opinion of Dec.* 24,
. 270.
capacity of a chemical agent to pro-
›ecific effect, medical or other, is not
entable. *Ibid.*
edicament, susceptible of being ad-
in various forms or doses, which re-
selected and measured with profes-
, in reference either to the quantity
ıt or the condition of the patient, so
ıce a particular benefit without col-
ry, is not a thing patentable, whether
y or as invention. *Ibid.*
;estion of the practicability of per-
rgical operations under insensibility
ent produced by anæsthetic agents
tentable invention. *Ibid.*
her principles, nor abstract philo-
ıs, nor the natural functions either
ı or inanimate matter, are things
. *Ibid.*

27. The employment of anæsthetic agents in association with surgical operations, whether by inhalation or by any other form of administration, internal or external, is not a recent discovery or invention, but is a universal fact, and is coeval with historic knowledge. *Ibid.*

28. The production of insensibility in the human system by anæsthetic agency or otherwise, and the performance of surgical operations during such insensibility, cannot be considered patentable, as an art, in contradistinction to a principle, function, or quality of matter. *Ibid.*

29. A new and useful machine invented by a slave cannot be patented. *Opinion of June* 10, 1858, 9 Op. 171.

III. Application.—Claim and Specification.—Caveat.

30. The specifications for an invention should be so distinct, intelligible, and certain that other persons besides the inventor may understand its nature and use. *Opinion of Feb.* 10, 1796, 1 Op. 64.

31. Cases of interfering applications for patents for useful inventions must, under section 9 of the act of February 21, 1793, chap. 11, be left in the first instance to arbitrators. *Opinion of Dec.* 17, 1814, 5 Op. 701.

32. No patent for an invention can properly issue unless the applicant makes oath that such invention hath not, to the best of his knowledge, been known or used in this or any foreign country; and if it turn out that any patent shall have been issued for an invention previously known and used, the same shall be utterly void. *Opinion of Jan.* 12, 1820, 1 Op. 333.

33. Where an applicant is entitled to two patents for useful inventions in respect to the same machine on two different specifications, made at different times, and requests the last patent to be antedated to correspond with the date of the first one: *Held* that such antedating would be illegal and improper. *Opinion of Feb.* 23, 1820, 5 Op. 722.

34. The party applying for a patent must furnish satisfactory evidence that he is a citizen of the United States; or if an alien, that he has resided in the United States for two years. *Opinion of May* 15, 1832, 2 Op. 511.

35. It is not proper to grant a patent on a joint invention to one of the inventors upon the assignment of the other; but all who are

concerned in the invention should join in the petition. *Opinion of July* 5, 1833, 2 Op. 571.

36. The Commissioner of Patents may permit one of two competing applicants for a patent to withdraw and refile his application after he has expressed an opinion favorable to the priority of the other; and such intervening opinion or decision is no bar to the issue of a patent on the new application, if, upon full examination of the whole subject, he considers the applicant entitled to it. *Opinion of Dec.* 22, 1849, 5 Op. 220.

37. A caveator is only entitled to return of two-thirds of the fee paid by him into the Patent Office in case of his acquiescence in the objections of the Commissioner. *Opinion of June* 2, 1853, 6 Op. 36.

38. It is a frequent error on the part of the patentees of new inventions, arising either intentionally or from want of logical precision of thought, to employ language of claim generic instead of specific, and so of undue comprehension; which improper generality of claim is the origin of many of the questions of interference, and will be reduced to its proper specific limits by judicial analysis and exposition. *Opinion of May* 1, 1855, 7 Op. 133.

39. The patent of Cadwallader Evans would seem in terms to embrace any use of fusible alloys in connection with infusible rods to open the valve or move the indicator of a steam-engine, but cannot cover the use of such alloy and the particular machinery for using it previously suggested by Professor Bache, and made public in a report of the Franklin Institute. *Ibid.*

40. Every applicant for a patent has the right to withdraw his application, and demand the restoration of two-thirds of the $30 duty money at any period of time, at least anterior to the making oath anew and proceeding upon the ulterior stages of inquiry after adverse report by the Commissioner. *Opinion of Aug.* 16, 1855, 7 Op. 390.

41. A claim of patent right, which undertakes to cover a class of things when the patentee's invention goes no further than a single variety of that class, is of no exclusive effect beyond that single variety. *Opinion of Dec.* 24, 1856, 8 Op. 270.

42. When a specification of patent endeavors to monopolize an idea, a function of the vital system, or a quality of objects in nature, instead of being limited to a particular instrumentality, or concrete form of applying that idea or function or quality in use, such patent is void for undue generality, unless that defect be cured by disclaimer in the manner of the statute. *Ibid.*

43. The payment of a duty upon a patent or caveat to the credit of the Treasury is not a pledge or deposit of the money, but an absolute and unconditional payment. *Opinion of Aug.* 18, 1857, 9 Op. 65.

44. If the patentee or caveator afterward demands the money to be repaid to him, he must show that his demand for it is founded on some law within whose terms he can bring his case distinctly and clearly. *Ibid.*

45. There is but one provision in the act of July 4, 1836, chap. 357, authorizing a duty once paid to be refunded, and that is found in the third sentence of the seventh section. That sentence authorizes $20 to be returned, not to a caveator nor one who has made an "incomplete application," but to a person who has made an application which is perfect enough to be examined, and which, in point of fact, has been examined and rejected. *Ibid.*

46. It follows that a party who merely files a caveat, paying the legal duty of $20, cannot withdraw the caveat and demand a return of $10. *Ibid.*

47. A person intending to make application for a patent asks the Secretary of the Interior beforehand whether it will be granted. The Secretary is advised to decline giving any answer. *Opinion of Sept.* 24, 1857, 9 Op. 95.

48. Drawings accompanying an application for a patent may be signed either by the inventor or by any person he may authorize. *Opinion of July* 28, 1859, 9 Op. 378.

49. The oath or affirmation required to be taken by an applicant for a patent, under the 7th section of the act of July 4, 1836, chap. 357, to promote the progress of the useful arts, &c., must be taken by the applicant, and cannot lawfully be taken by his agent or attorney. *Opinion of Sept.* 30, 1861, 10 Op. 137.

IV. Appeal from Commissioner.

50. An act of Congress allowed appeals in certain cases from the decision of the Commissioner of Patents to the chief judge of the circuit court of the District of Columbia; and a subsequent act, without taking away that

ded the right of appeal so as to lie
he assistant judges: *Held* that an
ommissioner requiring, on account
ty of the chief judge, that appeals
nly to the assistant judges, is con-
and without effective operation.
ne 2, 1853, 6 Op. 38.

tent laws having made ample pro-
vising the decisions of the Com-
proper cases, by the judiciary,
utive having no appellate power
ns arising under them, parties
to pursue the mode of relief there
See NOTE, 13 Op. 29.) *Opinion of*
), 13 Op. 28.

s relating to appeals from the
r of Patents to the judges of the
District of Columbia, reviewed.
ne 9, 1869, 13 Op. 79.

ovision of the 11th section of the
3, 1839, chap. 88, requiring an
n the Commissioner to the judge
ie Patent Office, to the credit of
fund," the sum of $25, is not re-
10th section of the act of March
. 88. *Ibid.*

the act of March 3, 1863, chap. 91,
ied the circuit court of the Dis-
nbia and established the supreme
District, the chief justice and asso-
of the latter court have the same
and determine appeals from the
r as the chief judge and assistant
e former court previously had.

lowance of $25 authorized by the
t 30, 1852, chap. 107, to be paid
atent fund" to the judge hearing
now, by virtue of the 7th section
July 20, 1868, chap. 177, payable
ppropriation for "miscellaneous
nt expenses of the Patent Office,"
irection of the Secretary of the
ee NOTE, 13 Op. 85.) *Ibid.*

urrender and Reissue.

patents for inventions have been
terwards canceled by petition of
s, and others bearing the same
ising additional improvements,
eir favor, others may afterward
additional improvements alone,
from the time when the second
patents were issued. *Opinion of Aug.* 7, 1831, 2 Op. 455.

57. Patents may be surrendered by parties to whom they were granted and new ones taken, including additional improvements. *Ibid.*

58. An assignee of a patent for an invention cannot surrender it and take to himself a new one on new and additional specifications, except upon proof that the new specifications were invented by the patentee and were intended originally to have been patented by him, and that the omission was a mistake. *Opinion of Aug.* 20, 1833, 2 Op. 572.

59. The oath of the inventor is requisite, for the act of Congress of Feb. 21, 1793, chap. 11, requires it; the mere statement of what are called corrected specifications by the patentee, or his assignee, is not sufficient. *Ibid.*

60. Unless there be some error in the specification arising from inadvertency, accident, or mistake, and without any fraudulent or deceptive intention, the patentee cannot surrender a patent which includes several distinct improvements, and take out several new ones. *Opinion of Dec.* 15, 1836, 3 Op. 165.

61. Where an application for the reissue of a patent in two or more divisions is made, while the original patent is in existence, the Commissioner of Patents has power to issue a patent for one or more of the divisions of the reissue application, and subsequently to issue a patent for the remaining divisions, if it be deemed that otherwise the applicant is entitled thereto. Until such application is ended in all its divisions, the vitality of the original patent continues, so far as required to support that portion of the application which remains undecided. *Opinion of Aug.* 31, 1880, 16 Op. 560.

VI. Extension of Patent.

62. Extension of patents for useful inventions may be granted to the legal representatives of patentees, where such patentees, if living, would be entitled thereto. *Opinion of April* 9, 1839, 3 Op. 446.

63. Applications for extensions of patents for inventions must be made to the Commissioner a sufficient time before the expiration of the term for which they were issued, to enable him to give the notice contemplated by the act of July 4, 1836, chap. 357, to the public in that section of the country most interested adversely to them. *Opinion of Nov.* 21, 1840, 3 Op. 595.

64. The 18th section of the act of July 4, 1836, chap. 357, as modified by the 1st section of the act of May 27, 1848, chap. 47, conferred a very large discretion upon the Commissioner of Patents in regard to patent extensions, and under these provisions subjects connected therewith properly fall within the scope of his investigation upon application for such extensions. *Opinion of April* 16, 1869, 13 Op. 28.

VII. Correction of Patent.

65. The date of a patent issued for an invention may be corrected to correspond with a patent granted by the King of Bavaria, where the mistake in that already issued arose from no fraudulent or deceptive intention. *Opinion of Sept.* 24, 1844, 4 Op. 335.

66. Where a patent was issued to B., J., and L. jointly, in conformity to their application as joint inventors, when in fact the device patented was not the joint invention of all of the applicants, but the sole invention of B., the others (J. and L.) being his assignees only: *Held* that it is not within the power of the Interior Department to correct the patent thus issued so as to show that B. was the inventor of the device and that J. and L. are the assignees thereof. *Opinion of Aug.* 7, 1878, 16 Op. 117.

67. The patent issued upon such application being void, the Department cannot, by means of alterations or corrections, impart validity thereto. *Ibid.*

68. The parties interested can file a new application in a case of that sort, which, if seasonably done, may be made the basis for the issue of a new patent; but the latter will not retroact by way of confirmation of the patent originally issued. *Ibid.*

VIII. Assignment.

69. Patents cannot issue to inventors and assignees of a partial interest jointly, but may issue to assignees of the whole interest. *Opinion of July* 7, 1845, 4 Op. 399.

70. No provision has been made for the issue of a patent for a part of an invention to the inventor and for the other part to his assignee. *Ibid.*

71. Where the inventor of a machine, before a patent issues to him, makes a full and complete assignment of all his right to another, the assignee is entitled to have the patent issued in his own name; but where the assignment of the inventor's right is only partial, although the parts excepted be very small, the assignee has no legal claim to the patent. *Opinion of Nov.* 28, 1859, 9 Op. 403.

72. An inventor stipulated with certain parties that they should have the exclusive use and ownership of any and all inventions which he might thereafter make for the cleaning of rice, in any and all "countries" in which the parties then were, or might thereafter be, interested in four other patents taken out by the inventor. In three of the other previous patents the parties had an interest coextensive with the United States; in the fourth they had an interest throughout the United States, except the cities of New York and Boston. Afterwards the inventor made another machine for cleaning rice. *Held* that under the contract mentioned the assignees were entitled to have the patent for the new machine issued in their own names. *Ibid.*

IX. Rights of Patentees.

73. Where an American citizen had obtained a patent for a fire-hearth to produce fresh water from the ocean on board of public ships, and also a patent for the same invention in England, and before it was brought into practical use in this country one of the articles so patented in England was captured on board a British vessel by the Enterprise: *Held* that no right to use such invention on American vessels accrued from the capture. *Opinion of May* 19, 1820, 5 Op. 726.

74. The rights secured by letters patent are the subjects of judicial, not of executive, decision. When all the laws and forms have been complied with, patents issue without inquiry as to the precise rights they confer. *Opinion of Aug.* 7, 1831, 2 Op. 455.

75. In respect to a claim that a certain patent had been infringed in the manufacture of pontons for the use of the Army of the United States, it was held that a report of the head of the Engineer Department and also of the Commissioner of Patents that the pontons were not covered by the patent in question constituted sufficient evidence to show there was no infringement as alleged. *Opinion of March* 29, 1859, 9 Op. 332.

76. The opinion of March 29, 1857 (9 Op.

2), respecting a claim that a certain patent d been infringed, reaffirmed. *Opinion of ne* 16, 1859, 9 Op. 349.

77. Officers of the United States, when they e articles manufactured in violation of the ghts of patentees, are liable to suit therefor. ence where articles are advertised for by the nited States, and it is claimed by an unsucssful bidder or other party that the successl bidder, in order to furnish the articles, ust make them in violation of his patent, it proper that the successful bidder should be quired to furnish a satisfactory bond of inemnity for the security of the officer against ay suit for infringement of patent by the use f the articles. *Opinion of Sept.* 24, 1878, 16 p. 137.

PAYMENT.

See also CLAIMS, XXIII; CONTRACT, VIII.

1. The security for a debt to the Governent, however ample it may be, is not a payent, and the Auditor should not so consider it. *pinion of Jan.* 24, 1823, 1 Op. 592.

2. Where a question concerning a doubtful llowance has been submitted to Congress, and n actual appropriation made by that body of e precise amount, there can be no valid obction to the payment. *Opinion of Dec.* 28, 836, 3 Op. 168.

3. The Secretary of the Navy may pay the mount of the judgment recovered against ommodore Elliot, for acts done in the perormance of his official duty, if there are funds ithin his control properly applicable to such n object. *Opinion of Feb.* 28, 1838, 3 Op. 306.

4. Payments directed by Congress to be made to M. and T. should be made by the Secretary of the Treasury to them or their constituted attorney, notwithstanding the interposition of claims by third persons grounded on assignments, insolvent, or other proceedings, anterior to the passage of the act directing the payment. *Opinion of May* 13, 1840, 3 Op. 533.

5. Accounting officers cannot, in the innumerable cases in which Congress directs specific sums to be paid to individuals, examine and settle previously existing claims and credits against such individuals. *Ibid.*

6. The first part of the act of 4th February, 1819, chap. 13, entitled "An act to authorize the payment in certain cases on account of Treasury notes which have been lost or destroyed," applies to notes issued from 1837 to 1841, inclusive. *Opinion of June* 12, 1841, 3 Op. 634.

7. A Treasury warrant regularly issued is legally available to the true owner at all times, and he may at all times claim the benefit of it; and the sum really due to the real creditor may be paid without the issue of any new requisition. *Opinion of Dec.* 29, 1843, 4 Op. 298.

8. A requisition and warrant issued in favor of Jeremiah Smith, jr., are not discharged by payment wrongfully made to another person. *Ibid.*

9. Where a warrant has been properly issued and paid by mistake to a wrong person, no new requisition can be issued to cover the claim. A requisition having been already issued, and upon it a warrant, which is in legal contemplation yet outstanding, the proper course to be pursued to adjust the matter is to issue a duplicate warrant reciting the facts concerning the disposition of the first, or to withdraw the first and issue another, to be treated as if presented the first time for payment. *Opinion of Jan.* 24, 1844, 4 Op. 307.

10. The person entitled to payment may be satisfied from the appropriation out of which his warrant was originally payable, the same as if the mistake had not occurred. He is not bound to await a new appropriation by Congress. *Ibid.*

11. The Treasurer having paid the warrant wrongfully through mistake, is chargeable with such mistake. *Ibid.*

12. Certificates issued under the third section of the act of 23d August, 1842, chap. 187, to provide for the satisfaction of claims under the fourteenth and nineteenth articles of the treaty of Dancing Rabbit Creek, when held in good faith by a pre-emptor, are receivable in payment for pre-emption lands. *Opinion of March* 20, 1846, 4 Op. 473.

13. A Cherokee reservee, under the treaty of 1836, in whose favor the commissioners appointed to adjudicate claims made an award, but to whom they delivered no certificate, is, nevertheless, entitled to payment. *Opinion of July* 7, 1846, 4 Op. 500.

14. As a general rule the certificate of the commissioners, indicating the amount due the claimant, is the proper evidence of the fact to be produced to the accounting officers, and upon which they are to make payment; yet the rule is not entirely inflexible. *Ibid.*

15. And claimants under the seventeenth article of the Cherokee treaty of 1836, in whose favor an award has been made, are entitled to payment even though they cannot present a certificate of the amount. *Opinion of July* 7, 1846, 4 Op. 504.

16. A draft drawn by one of two Indian commissioners sent to treat with the Prairie Indians, to the order of and indorsed and negotiated by the other, to Barnley & Co., the holders, should be paid, notwithstanding the proviso to the appropriation act subsequently passed. *Opinion of Aug.* 8, 1846, 4 Op. 518.

17. Upon a reconsideration of the claim of David Taylor to payment of an award by the commissioners, upon further evidence produced, it appears that the claim was not adjudicated within the terms of the treaty. *Opinion of Aug.* 28, 1846, 4 Op. 528.

18. Therefore payment of the claimant cannot be properly made unless the same shall hereafter be allowed by the commissioners. *Ibid.*

19. The Bank of the Metropolis is entitled to payment of a draft, drawn by a contractor for removing Miami Indians to the country assigned them west of the Mississippi, upon the Secretary of War, and accepted, payable from the contract moneys, and thereafter transferred to said bank, notwithstanding subsequent assignments of the moneys due upon said contract; such draft being a prior equitable assignment of the moneys to become due, and made with the knowledge and consent of the Secretary of War. *Opinion of Jan.* 15, 1847, 4 Op. 542.

20. Payment of an award of the Cherokee commissioners to Betsey McIntosh, upon a claim preferred by her, under the thirteenth article of the treaty of 1836 with the Cherokee Nation, for the value of a reservation which she had been required to abandon, cannot be made from the moneys appropriated by the acts of July 2, 1836, chap. 267, and June 12, 1838, chap. 97. *Opinion of Sept.* 14, 1847, 4 Op. 621.

21. Where an agent and attorney for claimants under the treaty of 1836 with the Cherokees undertook to prosecute certain claims before the commissioners for the consideration of 10 per cent. on every claim awarded, and omitted to claim his percentage upon the first award, consenting to its payment to the party, but claimed the same upon the payment of a subsequent award, as well as the 10 per cent. on said last award: *Held* that there should not be deducted from the last award any percentage which may have accrued to the agent and attorney upon other claims. *Opinion of Aug.* 5, 1848, 5 Op. 13.

22. Payments of the commissioners' awards should be made to the claimants, or their executors or administrators, unless some other person shall produce a warrant of attorney, duly executed, referring to the resolution allowing the claim and specifying the amount, and authorizing him to receive it. *Opinion of Sept.* 20, 1848, 5 Op. 36.

23. The Senate bill, reported on the 9th February, 1849 (see act of March 3, 1849, chap. 129), to provide payment for horses or other property lost or destroyed in the military service of the United States, embraces field, staff, and other officers, mounted militia, volunteers, rangers, and cavalry engaged in the military service of the United States since the 18th June, 1812, whether the owners belonged to the regular or other military service. *Opinion of March* 23, 1849, 5 Op. 80.

24. As the original claimant, Henry de la Francia, was dead at the passage of the supplementary act of 14th August, 1848, chap. 174, authorizing the Secretary of State to settle his claim for advances, &c., and as the claim was assets belonging to his estate, the avails of which are to be accounted for as such, the amount awarded should be paid only to an administrator duly appointed and authorized to receipt for the estate. *Opinion of July* 17, 1849, 5 Op. 135.

25. But as it appears that a competent court has decided Joseph de la Francia to be the sole distributee entitled to the amount from the administrators, the Secretary is advised to take a receipt from him or his attorney also. *Ibid.*

26. Under the power of attorney executed by J. de la Francia to James Bowie, the latter

l authority to substitute William C. John-
in his stead. *Opinion of July* 20, 1849, 5
137.

7. The payment of a liquidated demand
inst the Government to a person not author-
l to receive it does not relieve the Govern-
nt from responsibility to make payment to
proper claimant, and the loss must fall
n the United States. *Opinion of Nov.* 19,
9, 5 Op. 183.

8. No part of the money appropriated for
capita payments to the Cherokees can be
d otherwise than by an equal distribution
t among those Indians individually. (See
nion of 23d of June, 1851, 5 Op. 379.)
inion of Dec. 2, 1851, 5 Op. 502.

9. Where a sum of money, standing in the
me of A., had been enjoined in a suit in
uity by B., and by due order not appealed
e injunction was dissolved as to a part of
d sum, and its payment ordered to C.:
ld that the Secretary of the Treasury might
wfully pay to C. according to such order.
pinion of May 14, 1854, 6 Op. 460.

30. A professed award, for the value of an
nprovement under the provisions of the
herokee treaty of December 29, 1835, which
as made by the commissioners in blank as
the sum, cannot be paid as an award in
rtue of the act of July 31, 1854, chap. 167,
aking appropriations for the execution of that
aty. *Opinion of Feb.* 26, 1855, 7 Op. 54.

31. The Patent Office made a deposit with
W. C., bankers in Washington, subject to
e draft of D. J. B., an agent of the office in
ndon, upon the certificate of which B. B. C.,
nkers in London, advanced money to
J. B., after which, and before repayment
the advances made by B. B. C., S. W. C.
spended payment: *Held* that the Patent
fice must indemnify B. B. C. *Opinion of*
rch 13, 1855, 7 Op. 64.

32. The question whether the United States
ll pay according to their original tenor
afts drawn by the Mexican Government
nder the Mesilla convention, or suspend the
yment at the subsequent request of said
vernment, is a matter of political, not of
gal determination. *Opinion of Nov.* 25, 1855,
Op. 599.

33. The Government having once paid
oney to the commissary of Fremont's Cali-
rnia Battalion, on exhibition of the receipt
of a party, in the ordinary routine of account-
ing at the Treasury, is not held to pay the
same a second time to the party himself, the
latter having his remedy against the commis-
sary. *Opinion of Jan.* 9, 1857, 8 Op. 304.

34. When a payment has been made ille-
gally at the Treasury on account of some spe-
cific appropriation, that does not prevent pay-
ment out of the same appropriation to the
rightful party when he shall appear. *Opinion*
of Feb. 9, 1857, 8 Op. 377.

35. Presumption of payment, arising from
lapse of time, in the case of a draft for amount
due for supplies of fodder furnished to the
Army, which was dated February 25, 1852, but
acceptance of which was refused on the 7th of
April, 1852. *Opinion of Sept.* 15, 1858, 9 Op.
187.

36. The holder of an unindorsed pay certifi-
cate issued to a soldier is not entitled to pay-
ment of the amount. *Opinion of July* 24,
1860, 9 Op. 453.

37. An act of Congress (of March 2, 1857,
chap. 66) directed the Secretary of War to
settle, upon principles of justice and equity,
the claim of certain persons named as officers,
musicians, and privates of a militia company
in South Carolina during the war of 1812, and
to pay the amount adjudicated to be due to
said parties. It was discovered after the award
that three of the persons named in the act were
negro slaves. One of them, Mingal Crawford,
at the time of rendering the military service,
was owned by Gabriel Crawford, since de-
ceased, and his administrator claimed the
amount found to be due to Mingal, who at the
time of the adjudication of the Secretary was
the property of another person: *Held* that
neither the slave himself, nor his former owner,
nor his second master could lawfully demand
payment of the sum which was adjudicated to
the slave. *Opinion of Nov.* 2, 1860, 9 Op. 502.

38. Under the act of March 3, 1865, chap.
77, "to provide ways and means for the sup-
port of the Government," the Secretary of the
Treasury has the option to pay contractors for
materials and supplies the amount of money
called for by the requisitions, or to give such
contractors bonds issued under authority of
the act, when they have expressed a desire to
subscribe to the loan thereby authorized.
Opinion of March 30, 1865, 11 Op. 180.

39. The holders of a United States note

which was stolen before maturity, and, after an alteration by the thief of the number upon the note, was transferred to the holders for a valuable consideration, and without notice of the larceny, are entitled to receive payment of it from the Government. *Opinion of June* 24, 1865, 11 Op. 258.

40. The prize certificates issued to Samuel Harding, jr., as acting ensign, cannot be paid in the hands of Walter Taylor. *Opinion of July* 5, 1866, 11 Op. 519.

41. The Secretary of State has authority, under the joint resolution of July 5, 1866, to pay the moneys appropriated for the Paris Exposition, to be expended in Europe, in coin. *Opinion of Aug.* 14, 1866, 12 Op. 9.

42. The moneys payable by the bonds and coupons issued by the Leavenworth, Pawnee and Western Railroad Company, in favor of the Delaware tribe of Indians, pursuant to the treaty ratified by the President on the 4th of October, 1861, may be lawfully paid in legal-tender Treasury notes. *Opinion of Nov.* 7, 1866, 12 Op. 84.

PEA PATCH ISLAND.

1. The United States being in possession of the island of Pea Patch, under title derived from the Duke of York, may require a prosecutor to show title in himself before any proof of title need be deduced; and a prosecutor, under a grant taking for its western boundary the east side of the Delaware River and Bay, can never reach the Pea Patch. *Opinion of Jan.* 5, 1820, 1 Op. 331.

2. From the papers submitted in relation to the Pea Patch, the title of the United States derived from the State of Delaware is a doubtful one; but the Attorney-General finds it impossible in the present state of the case to give a decisive opinion. *Opinion of Dec.* 31, 1833, 2 Op. 590.

PENNSYLVANIA RESERVE REGIMENTS.

The Pennsylvania Reserve regiments, organized under the act of assembly of the State of May 15, 1861, should be formally mustered into the service of the United States. *Opinion of Aug.* 17, 1861, 10 Op. 100.

PENSION AGENCIES AND AGENTS.

1. The agent for paying pensions is not the accounting officer intended by the fourth section of the act of 4th July, 1836, chap. 362. *Opinion of April* 13, 1837, 3 Op. 203.

2. The compensation allowed to pension agents by the second section of act of 20th February, 1847, chap. 13, does not extend to services rendered previous to the passage of the law. *Opinion of July* 19, 1852, 5 Op. 569.

3. The authority given to the Secretary of War by that act may be exercised, according to his discretion, otherwise than in pursuance of a general prospective rule established by the Department; and where such rule was made subsequent to the enactment of the second section of the act, and did not provide for the time of service intervening between the date of the law and the date of the rule, the Secretary may now allow compensation for that intermediate period. *Ibid.*

4. The consolidation by the President, on the 23d of January, 1871, of the two pension agencies previously existing in the city of New York was within the competency of the Executive, and a valid exercise of power. *Opinion of Dec.* 6, 1872, 14 Op. 147.

5. The authority given the President by the act of February 5, 1867, chap. 32, touching the establishment of pension agencies and the appointment of pension agents, may be exercised by him according to his judgment, subject only to the restrictions imposed by the two provisoes in that act. *Ibid.*

6. The law concerning the establishment of pension agencies and the appointment of pension agents, as it existed before and at the time of the adoption of the Revised Statutes, reviewed. *Opinion of May* 3, 1877, 15 Op. 247.

7. Sections 4778, 4779, and 4780 Rev. Stat. produce no change in the previous state of the law on that subject. *Ibid.*

8. The President has authority to consolidate two or more pension agencies into one, by discontinuing some agencies and transferring the business thereof to others. Upon the discontinuance of an agency the official functions of the incumbent cease; his hold on the office necessarily terminates with its extinguishment, and the tenure-of-office law no longer applies. *Ibid.*

9. Incumbents of agencies, whose districts

subsequently enlarged by the transfer reto of the business of discontinued agen-, are competent to perform the duties reof as well after as before the enlargement, new appointments are not made necessary the change. It is otherwise with the in-ıbent of an agency which has been discon-ıed. The latter cannot be put in charge of ther separate and distinct agency without ew appointment. *Ibid.*

0. A bond conditioned for the faithful dis-rge of all the duties of the office "accord-to the laws and instructions which are now force, or which shall be in force at any time ring" the continuance of the agent in office, ll, in the case of an agent whose agency is larged during his term in the manner above licated, and upon whom increased duties are us devolved, subject the sureties thereon to ıbility after the enlargement of the agency. *id.*

PENSIONS.

See also NAVAL PENSION FUND.

I. *Generally.*
II. *War of the Revolution, including Pensions to Widows of Officers, &c., who served therein.*
II. *Invalid Pensions (Army) subsequent to the Revolution.*
V. *Invalid Pensions (Navy) subsequent to the Revolution.*
V. *Widows, Children, &c. (Army and Navy).*
VI. *For Service in War of* 1812.
'II. *Virginia Half Pay.*

I. Generally.

1. It is irregular for the War Department to ccept certificates of Navy surgeons instead of heir "affidavits," as required by the act of d March, 1819, chap. 81, regulating payments o invalid pensioners. *Opinion of Jan.* 17, 822, 1 Op. 533.

2. Under the act of 15th May, 1820, chap. 09, pensions do not commence until the testi-nony in the case shall have been taken, au-henticated, and in all respects completed, as he same is required to be in order to its recep-ion at the Department. *Opinion of July* 19, 1822, 1 Op. 562.

3. The act of 14th July, 1832, chap. 236, does nothing more than repeal the law of 3d March, 1819, chap. 81, and thereby the necessity of adducing proofs of continued disability is dispensed with. It does not restore to the pension roll any one who had been dropped from it. *Opinion of Oct.* 27, 1832, 2 Op. 539.

4. It is not obligatory on the Secretary of War to issue new pension certificates where the parties have pledged them for debt and creditors refuse to deliver them without payment. The law does not require them in such cases to be renewed; nor ought the refusal of creditors to redeliver certificates to pensioners to prevent the payment of such pensions. *Ibid.*

5. The act of May 20, 1836, chap. 77, placed pensioners on precisely the same footing as if the act to prevent defalcations, &c., had never been passed; consequently all moneys which have been withheld from pensioners under the construction theretofore given to the act to prevent defalcations ought to be refunded. *Opinion of June* 27, 1836, 3 Op. 135.

6. Pensions, under the act of July 4, 1836, chap. 362, are not liable for the pensioner's debts. *Opinion of Oct.* 24, 1836, 3 Op. 151.

7. The pension of Pigeon, the Cherokee chief, is allowable under the act of April 14, 1842, chap. 24, and should be paid to his personal representatives. *Opinion of June* 23, 1842, 4 Op. 55.

8. If a person entitled to a pension be overpaid by mistake, or by the application of a wrong principle of computation, and yet have a further claim against the Government, the claim may be set off against the said over-payment. (But see opinion of October 24, 1832, 2 Op. 532.) *Opinion of July* 2, 1842, 4 Op. 70.

9. Where the husband of the applicant, Commodore Porter, in his lifetime applied for a pension for disability incurred in 1803, and the same was allowed by the proper Department at the rate of $40 per month, to take effect from the 24th January, 1825, when he retired from service in the Navy; and then, in 1839, made an application for arrears from 1803, under the provisions of the act of 3d March, 1837, chap. 38, and received a reply from the Secretary of the Navy, deciding that there was due him a pension at the rate of $12.50 per month, from 1803 to 24th January, 1825, but did not receive the same in his lifetime; on the application for

it by his widow: *Held* that such an allowance exists in the form of a debt due to his estate, and that the legal representatives are entitled to receive it. *Opinion of Aug.* 28, 1843, 4 Op. 238.

10. The fourth section of the act of 3d March, 1845, chap. 71, providing that accounts adjusted by the accounting officers of the Treasury shall not be reopened without authority of law, and that no account shall be acted upon at the Treasury unless presented within six years from the date of the claim, does not affect applications under a general law for pensions. *Opinion of April* 22, 1845, 4 Op. 366.

11. Pensions are gratuities, not claims or accounts, within the meaning of the statute; yet when these are once placed on the pension roll they become claims to semi-annual payments, which, if not asserted within six years, cannot be audited without the authority of Congress. *Ibid.*

12. The second section of the act of May 7, 1846, chap. 13, was intended to facilitate applications of widows to pensions, founded on their marital relations, by operating on the proof required. *Opinion of June* 23, 1846, 4 Op. 497.

13. To establish their claims it is sufficient for widows to prove that their husbands were entitled to pensions, and that they are the widows of such pensioners. *Ibid.*

14. The fact that the husbands were upon the roll and drew pensions is presumptive evidence that they were entitled to them; yet, if they were not, that fact may be proved. *Ibid.*

15. General reputation and cohabitation are, in general, sufficient evidence of marriage; but as this is only presumptive, it may be rebutted by countervailing testimony. *Ibid.*

16. The law should be construed liberally and favorably towards applicants. *Ibid.*

17. The act of 10th July, 1832, chap. 194, transferred to the Secretary of the Navy all the powers theretofore possessed by the commissioners of the Navy pension fund to make regulations for the admission of persons upon the roll of Navy pensioners and for the payment of such pensions. *Opinion of Sept.* 27, 1848, 5 Op. 41.

18. If it has been the settled rule of the Department that pensions shall commence at the time of completing the proofs, it will be very difficult now to depart from it. *Ibid.*

19. The rule of the Pension Office that an application for a pension cannot be entertained after the lapse of twenty-five years from the time when the disability was incurred is unauthorized by law, and therefore invalid. *Opinion of Feb.* 16, 1849, 5 Op. 62.

20. The power conferred upon the Secretary of the Navy to establish rules and regulations for the examination and adjudication of claims for admission upon the roll does not authorize the enactment of a rule or statute of limitations. *Ibid.*

21. The commissioners of the Navy pension fund were authorized and directed to make such rules and regulations as should appear to them expedient for the admission of persons on the roll of Navy pensioners and for the payment of such pensions; and they having provided that pensions are to commence from the time of completing the proofs, and the same having been continued since their powers were transferred and devolved upon the Secretary of the Navy, the practice should be adhered to. *Opinion of July* 14, 1849, 5 Op. 134.

22. It may be doubtful whether the provisions of the second section of the act of the 4th February, 1822, though general, are not to be confined to cases of claims for revolutionary pensions. *Ibid.*

23. When the statute provides pension for disability or death, occasioned by wounds or injuries received, casualty occurring, or disease contracted, in the line of duty, it intends that the performance of duty must have relation of causation or consociation, mediate or immediate, to the wound, the casualty, the injury, or the disease which produces the disability or death. *Opinion of May* 17, 1855, 7 Op. 150.

24. To determine the right of pension, the question is not whether, when the cause of disability or death occurred, the party was on duty or not, in active service, or on furlough or leave, in arrest or not, but whether, in any of the possible conditions of service, the cause of disability or death was appurtenant to, dependent upon, or connected with, acts within, or acts without, the line of duty. *Ibid.*

25. Upon the question of casualty, the opinions of experts are evidence, but they do not constitute either exclusive or conclusive proof; and the question is to be judged by the real facts, like any other matter of evidence. *Ibid.*

26. Where the proofs as to the question of

tor and subject are balanced, and it is impossible to determine by them whether the se be one of contemporaneity or collocation ly, or of cause and consequence, it is a reasonable inference of public policy to presume favor of the service. *Ibid.*

27. It is according to public policy to preme in favor of the service, where the line of ity enters potentially into the causes of disility or death, although it be not certainly ovable that it was the exclusive or predominnt cause. *Ibid.*

28. Where the pension acts omit to make ention of representative persons, the latter e not entitled, according to the tenor and ue intendment of the acts. *Opinion of Feb.* 1856, 7 Op. 619.

29. The revolutionary pension acts have en so long misconstrued in this respect that seems too late to return to their proper conruction. *Ibid.*

30. But no such misconstruction of the inlid pension acts has obtained in practice, r can it now be allowed. *Ibid.*

31. Cherokee Indians, entitled to invalid nsions by treaty, have no larger rights in this spect than officers and soldiers of the Army. id.

32. Hence, a pension, claimable but not aimed by a Cherokee in his lifetime, does not scend as arrears to his legal representatives. id.

33. Arrearages of pensions claimed and addicated belong to the representatives of the rty on his decease as a debt due from the overnment. *Opinion of June* 9, 1856, 7 Op. 17.

34. *Secus*, when the right to claim a pension tists but the right has not been asserted by ie party in his lifetime. *Ibid.*

35. An exception to this rule has been esablished in practice by misconstruction of the tatute in favor of the children of persons enitled by reason of service in the Revolutionary ar. *Ibid.*

36. While it may be inexpedient to disturb is practice now, it cannot be extended, by rther misconstruction, beyond the case of ildren. *Ibid.*

37. The issue of a pension certificate to the ong party does not justify the Commissioner afterwards refusing a certificate to the rightful party. *Opinion of Feb.* 9, 1857, 8 Op. 377.

38. In order to entitle the persons named in the second, third, fourth, and eleventh sections of the pension act of July 14, 1862, chap. 166, to the benefit of its provisions, it is essential that the officers or other persons named in the first or tenth sections of the act should have died in the military or naval service of the United States. *Opinion of June* 11, 1863, 10 Op. 492.

39. A pensioner residing in an insurrectionary State, who did not take up arms against the United States, or give encouragement to the rebellion, is entitled, upon the termination of the hostile relation, to be paid the pension money due him from the time the rebellion began. *Opinion of March* 17, 1866, 11 Op. 442.

40. The third *proviso* of the act of April 20, 1844, chap. 15, declaring that "no person in the Army, Navy, or Marine Corps shall be allowed to draw both a pension as an invalid and the pay of his rank or station in the service, unless the alleged disability for which the pension was granted be such as to have occasioned his employment in a lower grade, or in some civil branch of the service," is not repealed by the fifth and thirteenth sections of the act of July 14, 1862, chap. 166. *Opinion of Aug.* 8, 1872, 14 Op. 94.

41. The assignment of his pension certificate by an inmate of the National Home for Volunteer Soldiers, under section 4832 Rev. Stat., does not give to the managers of that institution a right to collect or receive the pension therein mentioned for any period of time other than that during which he remains an inmate of the Home or receives its benefits. *Opinion of Aug.* 19, 1879, 16 Op. 374.

42. The Home is not authorized to collect or receive arrearages of pensions under the act of January 25, 1879, chap. 23, either on assignment or otherwise. *Ibid.*

43. Payment of arrears of pension to the Home for prudential or other reasons, except when made in accordance with law, will not relieve the Government of its obligation to the pensioner. Assignments not warranted by special enactment are forbidden by section 4745 Rev. Stat. *Ibid.*

44. The act of June 16, 1880, chap. 236,

which provides for an increase of pension for certain pensioners "now receiving a pension of $50 per month" under the act of June 18, 1874, chap. 299, being in terms limited to those who *at the time of its enactment* were receiving a pension of $50 a month under the act of 1874, its benefits cannot be extended to those who may *thereafter* become entitled to receive a pension of the same amount under the act of 1874. *Opinion of Dec.* 15, 1880, 16 Op. 594.

II. War of the Revolution, including Pensions to Widows of Officers, &c., who served therein.

45. It was the intention of Congress to require proof of indigence as well as of service under the act of March 18, 1818, chap. 19, on the part of those seeking its benefits. *Opinion of March* 26, 1818, 5 Op. 711.

46. The form prescribed in the first section of the act of May 1, 1820, chap. 53, supplementary to the act of March 18, 1818, chap. 19, in relation to certain indigent persons who performed duty in the land and naval service of the United States during the revolutionary war, to verify the amount of property of the applicant, except the oath of the party and the certificate of the clerk, must be gone through with in open court. *Opinion of May* 9, 1820, 1 Op. 356.

47. The Secretary of War has not power to restore to the pension list the name of any person who may have been stricken off on the evidence of the schedule required by the act of May 1, 1820, chap. 53. *Opinion of Feb.* 19, 1821, 5 Op. 731.

48. It was the intention of Congress to make the amount of the schedule the test of the indigence of the applicant; and that, consequently, the relief given by the act of 1818 is to be continued in every case in which the schedule shall exhibit proof of such indigence that the income of the property is inadequate to the support of the applicant. *Ibid.*

49. By the terms "until the end thereof" (*i. e.*, of the revolutionary war), contained in the pension act of March 18, 1818, chap. 19, is meant until the treaty of peace was ratified. *Opinion of Feb.* 12, 1825, 1 Op. 701.

50. The preliminary articles provided that there should be a peace when the terms of a peace should be agreed on between Great Britain and France, and His Britannic Majesty should be ready to conclude it; but as they were only preparatory to peace, there was no peace in contemplation of law until the war of the revolution terminated by the ratification of the treaty in April, 1783. *Ibid.*

51. The Secretary of War may pay to a pensioner the amount which Congress has directed to be paid him out of the general appropriation for revolutionary pensions for the current year, although the amount was not contained in the estimates on which the general appropriation was made. *Opinion of June* 2, 1830, 2 Op. 343.

52. The act of May 31, 1830, chap. 228, is entirely prospective. It declares that the act of May 15, 1828, chap. 53, shall not be construed to embrace invalid pensioners; that the pension of invalid soldiers shall not be deducted from the amount receivable by them under the said act. These enactments operate *in futuro*. They prescribe a rule which is to be applied to cases that may occur after their date, but do not relate to the past or give any authority to reopen accounts which may have been theretofore settled. They require the Department to abstain from making such deductions thereafter, but do not authorize the payment of such as have been theretofore made. *Opinion of June* 10, 1830, 2 Op. 350.

53. The force of the act of May 31, 1830, seems to be directed against the second section of the act of May 15, 1828, which is confined to the surviving officers of the army of the revolution in the continental line, entitled to half-pay, &c., and does not extend to the non-commissioned officers, musicians, or privates of the Army. *Ibid.*

54. Pensioners whose means of support are sufficient, independent of the pension granted by the act of March 18, 1818, chap. 19, may be dropped from the roll. *Opinion of March* 22, 1832, 2 Op. 502.

55. Persons who served on board privateers are not embraced by the pension law of June 7, 1832, chap. 126. The act applies only to those in the public naval forces. *Opinion of July* 21, 1832, 2 Op. 531.

56. The first section of the pension act of June 7, 1832, chap. 126, embraces all surviving officers, musicians, soldiers, and Indian spies, who served in the continental line, State troops, volunteers, and militia, irrespective of

eir places of residence, except foreigners, ho held commissions in the American Army. *pinion of Oct.* 27, 1832, 2 Op. 539.

57. If an applicant has served in different ades for a time sufficient to entitle him to a ension, it must be graduated by the respective rms of service in each grade. *Ibid.*

58. The pension act of June 7, 1832, chap. 26, does not exclude those who have received ensions under other acts of Congress, where ie provisions of this act are more favorable to ieir interests. *Opinion of May* 18, 1833, 2 p. 568.

59. A commissary is within the act of 1832, nder the construction which it has received t the War Department, though he were excluded by that of May 15, 1828, chap. 53. *bid.*

60. Invalid pensioners previous to the act of 8th March, 1818, chap. 19, who relinquished heir pensions as invalids, in order to receive he benefit of that act, cannot, since the act of 9th February, 1833, chap. 31, receive annuies under the act of June 7, 1832, chap. 126, nd have a revival of their pensions as invalids. *pinion of Feb.* 27, 1834, 2 Op. 612.

61. By the terms "invalid pensioners" and invalid soldiers," used in the amendatory w of 1833, Congress meant those persons, id those only, who were borne as invalid ldiers on the invalid pension rolls; wherere, those not so borne on those rolls cannot considered within the law. *Ibid.*

62. Nor is there any legal provision which thorizes the transfer of their names from ie rolls of pensioners, under the act of 1818, the invalid pension roll on which they iginally stood. *Ibid.*

63. On consideration of questions arising pon the fourth section of the act of June 7, 832, chap. 126, *held* that in case a pensioner ied, leaving a widow, who also died without emanding the amount, the legal representaives of the widow only can demand the balnce due. *Opinion of Feb.* 28, 1834, 2 Op. 614.

64. Where there is no widow, but several hildren, some of whom die before payment, the surviving children, as such, are only entitled to their distributive shares of the balance due at the decedent's death; and the legal representatives of the deceased child are entitled to receive his share. *Ibid.*

65. Where the soldier shall have died before June 7, 1832, and subsequent to March 4, 1831, leaving a widow, who deceased before the former date, the children of the *soldier*, not of the widow, are entitled to the pension from the 4th of March, 1831, to the time of his death. *Opinion of April* 13, 1837, 3 Op. 202.

66. The third section of the act of July 4, 1836, chap. 362, granting half pay to widows or orphans where their husbands and fathers have died of wounds received in the military service of the United States, does not provide for widows of officers and soldiers who have died since the passage of the act. *Opinion of April* 13, 1837, 3 Op. 203.

67. It does extend to the widows of officers who were living at the time when the act of June 7, 1832, chap. 126, was passed. *Ibid.*

68. The right of a widow to a pension under the act of July 4, 1836, is a vested interest accruing on the passage of the law, and is not defeated by her neglect to apply for it; and it goes to her personal representatives at her death, there being no special provision giving it a different direction. *Ibid.*

69. Where the husband received a pension at his death, the pension of the widow, under that act, commences only from the date of his death. *Ibid.*

70. Widows on the pension-roll and receiving pensions under the third section of the act of July 4, 1836, chap. 362, are not entitled to pensions under the act of July 7, 1838, chap. 189. *Opinion of Aug.* 24, 1838, 3 Op. 367.

71. Widows of revolutionary soldiers, whose first marriage took place after the expiration of the last period of their service, and before January 1, 1794, who remarried anterior to the passage of the act of July 7, 1838, chap. 189, are not entitled to pensions. *Opinion of Sept.* 18, 1838, 3 Op. 376.

72. The act of March 3, 1837, chap. 42, and the joint resolution of July 7, 1838, have so far modified the act of July 4, 1836, chap. 362, that widows of revolutionary soldiers, who, having remarried, are again widows, irrespective of the date of the death of the second husband, or whether the second husband was a revolutionary soldier or not, are entitled to half pay; *provided*, said widows are otherwise entitled to the same. *Opinion of Oct.* 2, 1839, 3 Op. 477.

73. Where an act of Congress (that of March 3, 1839, chap. 164) directed the Secretary of

War to place the name of a widow of a revolutionary soldier, who was a pensioner, upon the roll of pensions at the same rate which her husband received, to commence at a date antecedent to the passage of the act, and it is discovered that she actually died before the passage of the act, leaving children surviving: *Held* that the payment be made to the children, according to the provisions of the act of March 2, 1829, chap. 28. *Opinion of May* 25, 1840, 3 Op. 541.

74. The widows of officers who actually received pensions under the act of June 7, 1832, chap. 126, are not entitled to the benefit of the act of July 7, 1838, chap. 189. *Opinion of May* 31, 1842, 4 Op. 46.

75. In consequence of the executive construction given to the act of July 7, 1838, chap. 189, Congress has declared, by resolution of August 16, 1842, that it embraces the cases of widows whose husbands died after the passage of the act of June 7, 1832, chap. 126, and before the act of July 7, 1838, chap. 189. *Opinion of Sept.* 2, 1842, 4 p. 91.

76. Widows take for five years, beginning in 1836, and are to be paid, according to the letter of the law, from that time. *Ibid.*

77. All declarations for pensions made prior to the act of April 30, 1844, chap. 15, restricting widows to only such part of the five years' pension as their husbands did not receive, are free from the influence of the restriction. *Opinion of May* 9, 1845, 4 Op. 376.

78. Widows who prepared their declarations prior to April 30, 1844, and filed them before January 23, 1845, from whom any part was withheld, on account of payment to their husbands, are entitled to the whole amount. *Ibid.*

79. There is no authority for making payment of the arrears of pensions due widows of revolutionary officers at their death, who have left no children, to executors or administrators. *Opinion of July* 14, 1846, 4 Op. 504.

80. Even where widows have died leaving children, the arrears cannot be received by executors and administrators as assets for the payment of the decedents' debts. *Ibid.*

81. Where the arrears of a pension due at the decease of the widow of a revolutionary officer were paid to the administrator appointed in one county of the State of Indiana, and an administrator subsequently appointed in another county preferred a claim for the same amount: *Held* that the Secretary of War, who made the payment, executed all the power conferred by Congress in respect to it. *Opinion of Jan.* 15, 1849, 5 Op. 62.

82. The representatives of a widow of a soldier of the revolution, who received a pension under the act of July 7, 1838, chap. 189, from the period of her husband's death to her own, have no claim for further payment on the pretense that her pension should have commenced at an earlier date. *Opinion of Aug.* 28, 1850, 5 Op. 248.

83. The pension having been a personal bounty to the widow herself, and the decision fixing the time for its commencement having been acquiesced in by her, it cannot now be contested by her representatives. *Ibid.*

84. The acts of Congress granting pensions or pay in the nature of pensions, to officers and soldiers of the revolution, and to the widows of such officers and soldiers, did not confer any heritable rights descending to personal representatives, but by misconception those acts came to be construed otherwise at an early period so far as regards the children of such officers or soldiers and the children of such widows; and it is too late now to retreat from this misconstruction. *Opinion of Nov.* 19, 1856, 8 Op. 198.

85. Where a revolutionary soldier, who has performed services which would have entitled him to a pension, has died without being placed on the pension-list, neither his children nor grandchildren are entitled after his death to make the application and get the pension which he might have got by taking the proper steps in his lifetime. *Opinion of Sept.* 19, 1857, 9 Op. 83.

86. The same rule is applicable to the case of a revolutionary soldier's widow who has died without being on the pension-list, and whose children or grandchildren make the application in her right. *Ibid.*

87. The acts of July 29, 1848, chap. 120, February 3, 1853, chap. 41, and August 5, 1854, chap. 267, do not authorize the payment of a pension to a widow for the period embraced by her second coverture. *Opinion of Nov.* 2, 1858, 9 Op. 247.

88. Eliza B. Burr intermarried with Col. Aaron Burr, a revolutionary pensioner, and afterwards obtained a decree of divorce absolutely dissolving the marriage: *Held* that she

was not entitled, on the death of Colonel Burr, to be placed on the pension-roll as his widow. *Opinion of Nov.* 6, 1863, 11 Op. 1.

III. Invalid Pensions (Army) subsequent to the Revolution.

89. Officers, privates, &c., who, although not "wounded," have lost their health while in the line of their duty to such an extent as to be disabled from performing further duty, are within the meaning of the term "otherwise," in section 14 of the act of March 16, 1802, chap. 9, and are *prima facie* entitled to the charitable relief provided. *Opinion of April* 6, 1815, 1 Op. 181.

90. Every officer in full commission, and not on furlough, must be considered on duty, though at the moment no particular duty is assigned him. *Ibid.*

91. The cadets at West Point who have been, or may be, wounded whilst in the line of their duty, are entitled to be placed on the list of invalids, as provided in the acts of 16th March, 1802, chap. 9, 29th April, 1812, chap. 72, and 3d March, 1815, chap. 79. *Opinion of April* 8, 1820, 1 Op. 348.

92. The act of 11th January, 1812, chap. 14, does not provide pensions for aids-de-camp as such, regulated by their pay as such; and therefore, until further legislation, they can receive only the pensions to which their commissions entitle them. *Opinion of Dec.* 5, 1820, 1 Op. 413.

93. Col. R. M. Johnson's pension is (under the operation of the second section of the act of May 15, 1820, chap. 109) to commence from the time of the certifying of the testimony. Testimony is never complete until it comes fully authenticated. *Opinion of July* 19, 1822, 5 Op. 750.

94. The act of 2d March, 1821, chap. 13, to reduce and fix the military peace establishment, has neither repealed nor changed in any manner the claims for pensions given by the analogous act of March 3, 1815, chap. 79, and the acts to which it refers. The eleventh section of the former act recognizes all the objects provided for in the seventh section of the act of 1815. *Opinion of Nov.* 17, 1828, 2 Op. 188.

95. Whether or not a former Secretary of War committed an error in allowing a pension for a partial instead of a total disability, the decision can only be remedied by an application to Congress. *Opinion of Dec.* 17, 1829, 2 Op. 309.

96. An invalid soldier, who has proved his title to a pension and has been placed on the pension-list, but who has omitted for more than two years to produce the proof of two surgeons, as required by the act of 3d March, 1819, chap. 80, may receive his pension whenever he offers such proof, without making another original application. *Opinion of Dec.* 9, 1831, 2 Op. 478.

97. In order, however, to entitle him to the pension for the whole of the time past, the proof must apply to his condition as an invalid at the expiration of every two years, and show that at those periods his disability continued. *Ibid.*

98. It rests with the President to prescribe the regulations under which a person shall be admitted as a pensioner, and the rate of pay which he shall receive, as well under the act of January 11, 1812, chap. 14, as that of March 16, 1802, chap. 9. *Opinion of May* 31, 1832, 2 Op. 519.

99. He may apply it to civil officers receiving a certain amount of income from their offices, whilst he exempts others from its operation. *Ibid.*

100. A sergeant who is disabled by wounds inflicted on him by the officer of the guard, in 1813, whilst attempting to pass the guard, under the sanction of a written permit granted by his commanding officer, is entitled to a pension under the invalid pension law, provided the wounds were given without sufficient justification, and he had a permit to pass, and was passing the guard for some purpose growing out of, or connected with, the public service. *Opinion of Dec.* 20, 1833, 2 Op. 589.

101. The regulation restricting the commencement of pensions to the time when the papers shall be authenticated is repugnant to the act of May 15, 1820, chap. 109. *Opinion of March* 31, 1836, 3 Op. 58.

102. An officer who, having lost a limb in the war of 1812, was mustered out of the service upon a captain's pension, and afterwards appointed battalion paymaster, may be regarded as having been appointed to the civil branch of the service within the meaning of the act of 30th April, 1844, chap. 15, and entitled to receive both his pension and his pay. *Opinion of Nov.* 1, 1848, 5 Op. 51.

103. The date of the invalid pension of an officer of the army depends on the lineal, not the brevet, rank of such officer. *Opinion of Aug.* 30, 1853, 6 Op. 88.

104. Volunteers, under act of July 22, 1861, chap. 9, who may be wounded or disabled in the service, are not within, or entitled to the benefit of, the provisions of the acts of January 29, 1813, chap. 16, and August 2, 1813, chap. 40. *Opinion of March* 11, 1862, 10 Op. 197.

105. Militia called out and mustered into service, under the President's proclamation of April 15, 1861, and who may be disabled in the service, are entitled to the pension benefits of the second section of the act of August 2, 1813. *Ibid.*

106. In March, 1865, a soldier received in battle a gunshot wound in the arm, resulting in the partial disability thereof. On October 3, 1867, an examining surgeon found that the injury to the arm occasioned the loss of fourteen-eighteenths of its original vigor, and therefore certified that the soldier was unable to do any manual labor: *Held* that the disability in this case was not "specific" within the meaning of section 4698½ Revised Statutes, and that no increase of pension was allowable to the soldier in respect of such disability, commencing prior to the date of the examining surgeon's certificate. *Opinion of May* 17, 1879, 16 Op. 331.

107. The terms "specific disabilities," as used in that section, signify those disabilities which are *specified* in the pension laws—such as the loss of a hand, foot, or eye. Injuries requiring medical examination to ascertain and declare their nature and extent, and as to the effect of which there is room for difference of opinion, are not comprehended thereby. *Ibid.*

IV. Invalid Pensions (Navy) subsequent to the Revolution.

108. Navy pensioners are included in the act of 3d March, 1819, chap. 81, regulating payments to invalid pensioners. *Opinion of Jan.* 23, 1821, 1 Op. 457.

109. A seaman disabled by punishment inflicted by an enemy for endeavoring to escape from him after having been taken prisoner, is within the spirit and letter of the act 23d April, 1800, chap. 33, granting pensions to seamen disabled whilst in the line of their duty. *Opinion of April* 17, 1821, 1 Op. 461.

110. The word "disabled," in the act of Congress of 23d April, 1800, chap. 33, means any degree of personal disability which renders the individual less able to provide for his subsistence. *Opinion of Dec.* 17, 1832, 2 Op. 542.

111. The act of 10th July, 1832, chap. 194, devolved upon the Secretary of the Navy the duty of deciding whether the disability is such as to entitle applicants to admission on the roll of Navy pensioners and what amount they shall receive. *Ibid.*

112. The disability mentioned in the act of April 23, 1800, chap. 33, in order to warrant an application to be admitted on the roll, is that degree of personal disability which renders the individual less able to provide for his subsistence. *Opinion of Dec.* 21, 1832, 2 Op. 545.

113. The act of March 3, 1837, chap. 38, for the more equitable administration of the Navy pension fund, ought not to be so construed as to include cases where the death occurred anterior to the date of the law by which the fund was established. *Opinion of June* 12, 1837, 3 Op. 246.

114. The second section of the act of March 3, 1837, chap. 38, adopts the pay of the Navy as it existed January 1, 1835, as the standard for all cases coming within that section. *Opinion of Nov.* 10, 1837, 3 Op. 291.

115. The act of 23d April, 1800, chap. 33, does not authorize pensions for wounds received in the line of duty prior to the passage of the act; nor can the act of 3d March, 1837, chap. 38, be construed to embrace such cases. *Opinion of Sept.* 3, 1838, 3 Op. 373.

116. Arrears of pension due a Navy pensioner at the time of his death must be paid over to his legal representatives. It does not revert to the Navy pension fund. *Opinion of March* 23, 1839, 3 Op. 435.

117. Commodore Porter, who is borne on the Navy pension roll at the rate of $40 per month, is entitled both to his pension and his regular pay as minister at Constantinople. The case of the minister does not fall within the second section of the act of August 16, 1841, chap. 8, which seems confined to persons in the naval service. *Opinion of May* 26, 1842, 4 Op. 39.

118. The second section of the act of 23d August, 1842, chap. 189, repeals the first section of the act of 3d March, 1837, chap. 38, and no allowances can now be made under it. *Opinion of April* 15, 1844, 4 Op. 319.

119. The act of 1837 was continued in force, emporarily, by the act of 16th August, 1841, hap. 8, in regard to certain cases; but was re-oked by the act of 1842, leaving no remedy or those cases except in an application to Con-ress. *Ibid.*

120. A lieutenant, otherwise entitled to a ension, is not entitled to receive it whilst on uty and in receipt of his pay as an officer of ie Navy. Nor can he receive it when not on uty, whilst in receipt of the pay allowed to is grade. *Opinion of May* 24, 1847, 4 Op. 582.

121. Officers who may be waiting orders, or a leave or furlough, can receive on account of ieir pensions only so much as, when added) their pay when on leave, &c., will amount) the pay of their grade when on duty. *Opin-)n of June* 2, 1847, 4 Op. 587.

122. The joint resolution of Congress of Au-ust 10, 1848, placed the officers of the Marine orps who served with the Army in the war ith Mexico on an equal footing with the offi-ers of the Army with whom they served. *)pinion of Nov.* 21, 1848, 5 Op. 59.

123. The phrase "other remuneration," em-loyed in said resolution must be understood) refer to pensions. *Ibid.*

124. When an individual by name is placed a the roll of Navy pensioners by special act, e becomes entitled only to such allowances nd under such circumstances as if he had been laced on the roll in the ordinary course of ad-inistration, in common with all other pen-oners of the same class. *Opinion of Sept.* 14, 354, 6 Op. 718.

125. The statutes concerning disability pen-ons in the Navy refer to two species of dis-bility: one, the particular disability in right f which the party's name was placed on the ension-roll, and which may not necessarily nfit such party for sea-service; and another isability, that of incapacity for sea-service, in hich latter case only pension may be cumu-ated upon pay to a prescribed amount, to be etermined according to the destination given o the party by the Secretary of the Navy. *)pinion of Jan.* 14, 1857, 8 Op. 321.

7. Widows, Children, &c. (Army and Navy).

126. The widows and children of those who erished on board public or private armed ves-els since the 18th June, 1812, and prior to the 22d January, 1825, are entitled to pensions. *Opinion of March* 31, 1825, 1 Op. 709.

127. In the case of a prize vessel having foundered or been lost at sea during the above period, having a crew transferred from a private armed vessel, the widows and children of those lost in the prize vessel are entitled to pensions. *Ibid.*

128. So, also, if a boat has been dispatched within that period, from a public or private armed vessel, on any duty, and those on board are drowned, their widows and children are entitled to pensions. *Ibid.*

129. The widow of a person serving on board a private armed vessel, who has died by reason of a wound received while acting in the line of his duty, is entitled to half the monthly pension to which the rank of the deceased would have entitled him for the term of five years; but in case of her death or intermarriage during the said term of five years, the half pay for the remainder of the term goes to the child or children of the deceased. *Opinion of June* 9, 1825, 2 Op. 1.

130. It is a vested right for so much money per annum for five years, subject to be discontinued and defeated by her death or marriage at any time within that term, but only from that time; and if the widow has neglected to receive all her dues from the Government up to the time of her marriage, before marriage, she may claim it afterwards. *Ibid.*

131. All the laws giving pensions to widows and children on the Navy pension fund take the half pay of the deceased officer, seaman, or marine, as the measure of the pension, so that twenty years' pension can only equal twenty years' half pay. *Opinion of July* 22, 1828, 2 Op. 95.

132. The husband of a woman, after her marriage, in her right may receive that portion of the pension which accrued to her during her widowhood; but all the laws discontinue the pension on her marriage, so that nothing can accrue after that event. *Ibid.*

133. It is the manifest policy of the law, and it has been the uniform practice of the Department, to discontinue pensions to children after they have attained the age of sixteen years. *Ibid.*

134. The first section of the act of May 23, 1828, chap. 72, does not extend all provisions given by the law of March 4, 1814, chap. 20,

but such part of them only as, under the operation of that act, had been assigned or belonged to the widow and children of those officers, seamen, and marines who had been killed in battle, or who had died of wounds received in battle during the late war. *Ibid.*

135. So far, and so far only, as the act of March 3, 1817, chap. 60, operated to give pensions to the widows and children of officers, seamen, and marines who died in the naval service during the late war, in consequence of disease contracted and casualties and injuries received in the line of their duty, those provisions have been continued by the acts of March 3, 1819, chap. 60, January 22, 1824, chap. 15, and May 23, 1828, chap. 72, and are so far embraced by the first section of the last-mentioned law. *Ibid.*

136. A pension can be allowed to a widow who was or had been within one year before in the receipt of a pension, under the acts of March 4, 1814, chap. 20, April 16, 1818, chap. 65, or January 22, 1824, chap. 15, but not to the children; the second section of the act of May 23, 1828, chap. 72, making no provision for children, but for widows only. *Ibid.*

137. The act of April 24, 1830, chap. 80, for the relief of the widows and orphans of the officers, seamen, and marines of the sloop-of-war Hornet, gave to the widows, children, parents, brothers, and sisters of those men a sum equal to six months' pay of their respective relatives, from which may be retained the moneys paid them by mistake. *Opinion of June* 4, 1830, 2 Op. 345.

138. All moneys which have been advanced for pay supposed to have accrued since September, 1829, have been improperly paid and may be recovered back. *Ibid.*

139. Widows and children of officers, seamen, and marines who have died since the late war of wounds received during the war, are entitled to a renewal of their pensions under the act of March 3, 1819, chap. 60. *Opinion of Sept.* 6, 1830, 2 Op. 371.

140. Under the act of April 24, 1830, chap. 80, for the relief of the widows and orphans of the officers, seamen, and marines of the sloop-of-war Hornet, relatives who are of the half blood are entitled to share with those of the whole blood in the order pointed out by the act. *Opinion of Nov.* 19, 1830, 2 Op. 399.

141. Looking also to the terms of this act, and to the intention of its framers, the collateral relatives, whether of the half or whole blood, are entitled to participate equally in the bounty which it provides. *Ibid.*

142. Where a pension was erroneously paid to a widow under the acts of March 3, 1819, chap. 60, and January 22, 1824, chap. 15: *Held* that it cannot be recovered back, nor set off against a pension which she is actually entitled to receive under the act of June 28, 1832, chap. 151. *Opinion of Oct.* 24, 1832, 2 Op. 532.

143. The applicant, Mrs. McCormic, is entitled to her pension, under the act of June 28, 1832, chap. 151, during the time she remained the widow of Lieutenant Leary. *Opinion of Jan.* 4, 1833, 2 Op. 548.

144. In order to entitle the widows and orphans of the officers who are wounded and die in the service of the United States to the pensions given by the act of March 3, 1815, chap. 79, it is necessary that the wound should be received while in service, under that law; wherefore a wound received in 1814, and death in consequence of it in 1828, will not entitle the widow or children to the pension. *Opinion of May* 20, 1833, 2 Op. 569.

145. The widow of a sailing master who died in 1813, but not in consequence of disease contracted or of injury received while in the service, is not entitled to be placed on the pension-list, the laws respecting the Navy fund not making any provision for such case. *Opinion of Oct.* 17, 1834, 2 Op. 662.

146. Where the pay of the officer was regulated, at the time of his decease, by the act of March 3, 1835, chap. 27, fixing it at $4,000 per annum, and he died leaving a surviving widow, who demands a pension under the act of March 3, 1817, chap. 60, giving half pay, &c., to widows: *Held* that the amount of the widow's pension must be regulated by the act of 1835, deducting all allowances usually made for all rations except one from the said $4,000, and paying her one-half of the residue. *Opinion of July* 20, 1835, 2 Op. 721; also *Opinion of Aug.* 17, 1835, *ibid.*, 724.

147. The pension to a widow is a vested right, ceasing upon her marriage as to further claim upon the Government, but remaining valid for arrears. The rights of the surviving husband to those arrears depend upon the laws

the State where the parties resided at the
ıe of the wife's demise. *Opinion of April* 1836, 3 Op. 69.

148. The widow of a master-at-arms in the vy of the United States, who died in 1815 consequence of a fall in the ship Ontario, l who was an *officer* within the meaning of act of January 20, 1813, chap. 10, is enti- l to a pension. *Opinion of April* 5, 1836, 3 . 71.

149. If the husband in that case is to be re- ded only as a seaman, and the widow not hin the act of 1813, she is referred to the of March 3, 1817, chap. 60, as all rights ler that law are saved, although the act has n since repealed. *Ibid.*

150. Where a soldier, embraced in the first tion of the act of July 4, 1836, chap. 362, died leaving a widow and children, and widow has married before the passage of act, the children are entitled to the benefits the law. *Opinion of Aug.* 3, 1836, 3 Op. 147.

151. The children of widows pensioned un- r the third section of the act of July 4, 1836, ap. 362, who shall have died leaving a bal- ce due them from the Government, are enti- d to such balance to the exclusion of execu- s and administrators. *Opinion of Oct.* 24, 36, 3 Op. 151.

152. Pensions under that act are not liable the pensioner's debts. *Ibid.*

153. Pensions to widows and orphans granted the first section of the act of July 4, 1836, ap. 362, commence from the day when the l was approved by the President, in all cases which the death of the party serving oc- rred anterior to that day; in subsequent ses from the death of the party. *Opinion of t.* 24, 1836, 3 Op. 153.

154. The act embraces the cases of widows d orphans whose husbands and fathers might bsequently die, as well as those who did die fore its passage. *Ibid.*

155. Mrs. Perry is not excluded by the act March 2, 1821, chap. 31, from the benefit of e act of March 3, 1817, chap. 60, and her ghts vested under it; so that the first act entioned is to be regarded as a grant to her d her family over and above her pension der the last-mentioned act. *Opinion of Nov.* 1836, 3 Op. 158.

156. Widows of officers, seamen, or marines e not entitled to pensions under the act of March 3, 1837, chap. 38, who remarried before the passage of the act. *Opinion of April* 7, 1837, 3 Op. 194.

157. Children of decedent officers, &c., whose widows married before the passage of the act, are entitled to the half pay granted by it until they arrive at the age of twenty-one years. *Ibid.*

158. Widows of Navy agents are not entitled to pensions under the act of June 30, 1834, chap. 134, concerning naval pensions and the Navy pension fund. Navy agents are neither officers, seamen, nor marines; nor are they in the naval service within the meaning of the law. *Opinion of April* 7, 1837, 3 Op. 196.

159. Under the act of March 3, 1837, chap. 38, the daughter of a deceased sailing master, who was paid a pension under the act of March 3, 1817, chap. 60, until she was sixteen years old, is now entitled to five years' additional pension, notwithstanding she is now over the age of twenty-one years. *Opinion of April* 10, 1837, 3 Op. 197.

160. Where the widow of an officer of the Navy died before the passage of the act of March 3, 1837, chap. 38, her representatives can take nothing by the act, as no right to a pension vested in her. *Opinion of April* 11, 1837, 3 Op. 199.

161. Widows of officers, seamen, or marines who remarried before the passage of the act of March 3, 1837, chap. 38, are not entitled to pensions under that act, but their children are. *Opinion of April* 11, 1837, 3 Op. 200.

162. As there was a joint resolution passed for the relief of Mrs. Decatur on the same day of the passage of the act of March 3, 1837, chap. 38, for the more equitable administration of the Navy pension fund, she must elect under which she will take, for but one pension can be allowed her. *Opinion of April* 11, 1837, 3 Op. 200.

163. Grandchildren are not included in the act of March 3, 1837, chap. 38, for the more equitable administration of the Navy pension fund. *Opinion of April* 12, 1837, 3 Op. 201.

164. But the children (the widow being dead) take in equal moieties from the death of the father until the death of one of themselves, or until they arrive at the age of twenty-one years. Where, as in this case, one of the children died before the other arrived at the age of twenty-one, the latter is entitled to the

full pension from her death until that time. *Ibid.*

165. A steward serving on board a ship-of-war is borne on the ship's books as one of the crew, and as such is a *seaman*, within the pension laws, so as to entitle his widow to a pension. *Opinion of Nov.* 18, 1837, 3 Op. 292.

166. Under the act of March 3, 1837, chap. 38, it is, but under the acts of January 20, 1813, chap. 10, and March 4, 1814, chap. 20, it is not necessary to be made to appear that the death occurred whilst the person was in the naval service, provided the death be proved to have been occasioned by a wound received whilst in the service and line of duty. *Opinion of April* 6, 1838, 3 Op. 324.

167. Upon a re-examination of the several acts giving pensions to the widows and children of officers having died of wounds received whilst in the line of their duty, it is *held* that the death must have occurred while the officer was in service, in order to entitle the widow and children to the bounty. *Opinion of July* 10, 1838, 3 Op. 338.

168. Widows and children of paymasters of the Army who shall have died while in service, by reason of wounds received in actual service, are entitled to the benefit of the fifteenth section of the act of 16th March, 1802, chap. 9, fixing the military peace establishment. *Opinion of March* 22, 1839, 3 Op. 434.

169. The widow of a surgeon in the Navy who was commissioned in 1811, resigned in 1824, reappointed in 1827, and who died in the service in 1832, is entitled, in respect to the time which is to determine its amount, to a pension only under the last appointment. *Opinion of June* 1, 1839, 3 Op. 468.

170. *Semble* that the widow of W., late quartermaster in the Marine Corps, who at the time of his death was entitled to $60 per month, is entitled to half pay. But as a committee of the Senate have taken a different view of the law, and have made a report against her, a satisfaction of the claim is not recommended until a legislative interpretation shall be given to the laws applicable to it. *Opinion of Nov.* 10, 1843, 4 Op. 280.

171. The child of Passed Midshipman Bacon is not entitled to full five years' pension under the acts of 30th June, 1834, chap. 134, and 15th June, 1844, chap. 53, but only to the remainder of the five years' pension not received by the widow during her lifetime. *Opinion of Jan.* 4, 1845, 4 Op. 353.

172. The pensions granted to widows, &c., by the act of 3d March, 1845, chap. 41, commence from the period of their cessation under the former acts of June 30, 1834, chap. 134, March 3, 1837, chap. 38, and August 16, 1841, chap. 8, respectively. *Opinion of March* 19, 1845, 4 Op. 357.

173. The act of March 3, 1845, chap. 41, extends a pension for five years to those widows who received pensions under former acts, in consequence of the death of their husbands having been occasioned by wounds received, or by accident, or disease contracted, whilst acting in the line of their duty as officers, seamen, or marines. *Opinion of April* 14, 1845, 4 Op. 360.

174. The act of March 3, 1837, chap. 38, was a renewal of pensions previously granted to widows entitled under the act of June 30, 1834, chap. 134, within the meaning of the act of 3d March, 1845. *Ibid.*

175. The fact of their being placed on the pension-roll by virtue of the mere comprehensive terms of the act of 1837, does not affect their rights under the act of 3d March, 1845. *Ibid.*

176. The terms of the act are fully satisfied by extending its provisions to cases which were within the act of 1834, although the pensions were granted for an indefinite period; and this whether the pensions were granted by the Commissioner of Pensions under the act of 1834, or that of 1837, provided the pensions granted were authorized by act of 1834. *Ibid.*

177. The act of March 3, 1845, chap. 41, authorizes the renewal of pensions to such widows of officers, seamen, and marines only as had enjoyed a five years' pension under previous laws, and which had ceased in consequence of the expiration of the period for which the same had been granted or renewed. *Opinion of Jan.* 23, 1847, 4 Op. 548.

178. Widows who had not been such for five years, or who had not exhausted their five years' pension under former laws, are not provided for. *Ibid.*

179. The applicants in this case, not having been widows for the period of five years, and not having exhausted their pensions under former laws, are therefore not entitled to the benefit of the act of March 3, 1845, but are

left to the generosity and justice of Congress in the premises. *Ibid.*

180. The acts of Congress granting pensions to widows of officers, seamen, and marines, who have died whilst in the service, or from disease contracted or injuries received whilst in the line of their duty, do not include cases of widows of engineers in the Navy appointed pursuant to the act of August 31, 1842, chap. 279. *Opinion of Oct.* 14, 1847, 4 Op. 631.

181. Pensions to widows of officers, seamen, and marines, when allowable, commence from the date of the passage of the act of June 30, 1834, chap. 134, in cases where the death of the husband occurred prior to that time, and from the death of the husband in all other cases. *Ibid.*

182. The first section of the act of August 11, 1848, chap. 155, renewing certain naval pensions, embraced all such widows and children as were receiving pensions under any of the laws of Congress passed prior to the 1st of August, 1841. *Opinion of Sept.* 6, 1848, 5 Op. 25.

183. The other class comprises all those widows and children who received pensions at any time within five years prior to the passage of the act. *Ibid.*

184. The word "special" occurring in said act is construed to mean "particular," and not "private," as it is used in that sense. *Ibid.*

185. As Congress neglected to provide, in terms, for widows of second lieutenants of marines in the second section of said act, it may be inferred that it intended to refer in the provision to lieutenants, without any other designation. *Ibid.*

186. The five years' half pay granted to widows under the act of February 3, 1853, chap. 41, commences at the time of the deaths, respectively, of the deceased officers or soldiers. *Opinion of Nov.* 18, 1858, 9 Op. 277.

187. The widows and orphans of volunteers, who die or are killed in the service, are not entitled, under the act of July 22, 1861, chap. 9, to the benefits of the act of July 4, 1836, chap. 362. *Opinion of March* 11, 1862, 10 Op. 197.

188. No provision of law seems to exist granting pensions to such widows and orphans. *Ibid.*

189. Under the 3d section of the pension act of July 14, 1862, chap. 166, the mother of a deceased soldier, if dependent in whole or in part on him for support, is entitled to the pension allowed by law, whether she be married or a widow. *Opinion of Sept.* 13, 1862, 10 Op. 341.

190. The widow of a former assistant engineer in the Navy, who died after his resignation by reason of disease contracted in the service and in the line of duty, is not entitled to a pension under the act of July 14, 1862, chap. 166. *Opinion of June* 11, 1863, 10 Op. 492.

191. To entitle the persons named in the second, third, fourth, and eleventh sections of that act to the benefit of its provisions, it is essential that the officer or other person named in the first and tenth sections of the act should have died in the military or naval service of the United States. *Ibid.*

192. The widow of a naval officer who died at a navy-yard or station of a disease contracted while on duty there, is not entitled to a pension under the provision of section 2 of the act of July 27, 1868, chap. 264. *Opinion of Sept.* 6, 1870, 13 Op. 328.

193. The widow of a deceased naval officer was allowed a pension from June 23, 1843, the date of his death, up to April 8, 1847, the date of her second marriage, after which it was discontinued. In 1854 she obtained a divorce from her second husband for intemperance and cruelty. She now alleges that the latter, at the time of her marriage with him, had a wife living, and that she was cognizant of this when she instituted her suit for divorce, but remained silent as to the fact. And she claims a restoration of the pension formerly allowed her as the widow of said officer, on the ground that her second marriage was illegal and her right to the pension was not determined thereby. *Held*, however, that by promoting said suit, and procuring a decree which in effect affirmed the validity of her marriage while declaring its dissolution, the claimant has rendered the objection of illegality of the marriage unavailable in support of her claim, so long as that decree stands unvacated or judicially unimpeached. *Opinion of April* 19, 1873, 14 Op. 220.

194. In that suit both the fact and the validity of the second marriage were directly in issue as the very foundation of the proceeding; and a sentence of divorce, so far as it affects the *status* of the parties, is regarded as a

judgment *in rem*, and, if free from fraud, furnishes in general conclusive proof of the facts which were in issue and were adjudicated by it, as well against strangers as against the parties. *Ibid.*

195. The claimant ought not to be permitted to prevail against proof of this high character, by showing, after the lapse of twenty years from the rendition of the decree of divorce, that she obtained it upon a misrepresentation of the facts to the court. *Ibid.*

196. The words "pensioner" and "person entitled to a pension," in section 4718, Rev. Stat., include a widow pensioner. *Opinion of Aug.* 10, 1876, 15 Op. 591.

197. *Held*, accordingly, that where a widow pensioner died, leaving an "accrued pension," no child surviving, the person who bore the expenses of the last sickness and burial of the deceased is entitled to reimbursement from such pension in case sufficient assets to meet such expenses were not left. *Ibid.*

198. An officer in the military service, during the rebellion, was discharged March 22, 1864, and died February 26, 1878, of disease contracted in the service. He was not a pensioner, nor had he ever applied for a pension. His widow, having obtained a pension running from the date of his death, made application under the acts of January 25, 1879, chap. 23, and March 3, 1879, chap. 187 (passed since her pension was obtained), for arrears of pension from the date of his discharge. *Held*, that the application is not allowable under those acts. *Opinion of Oct.* 9, 1879, 16 Op. 639.

VI. Service in War of 1812.

199. The provision in the first section of the act of March 9, 1878, chap. 28, authorizing and directing the Secretary of the Interior "to place on the pension-rolls the names of the surviving officers and enlisted and drafted men * * * of the military and naval service of the United States, who served for fourteen days in the war with Great Britain," does not include service performed in the land or naval forces after the ratification of the treaty of peace between the United States and Great Britain, which took place February 17, 1815. That act is to be construed in connection with the act of February 14, 1871, chap. 50, wherein the "war with Great Britain" referred to above is expressly declared to have been terminated by the treaty of peace. *Held*, accordingly, that a soldier who served fourteen days after the date of the ratification of the treaty of peace is not entitled to the benefit of the act of March 9, 1878. *Opinion of Sept.* 21, 1878, 16 Op. 134.

VII. Virginia Half-Pay.

200. Field officers, captains, and subalterns, who commanded in the battalions of Virginia on the continental establishment, or who served in the battalions raised for the immediate defense of the State or of the United States, and all such officers as became supernumerary on the reduction of any of said battalions, and who again entered the service when required, in the same or any higher rank, and continued therein until the end of the war, were entitled to half-pay under the laws of that State, although not residents of Virginia; so also were the naval officers of the like rank. *Opinion of Feb.* 9, 1836, 3 Op. 37.

201. The fourth section of the act of March 3, 1845, chap. 71, does not affect claims for half pay of officers of the Virginia State line, provided for by the act of the 5th of July, 1832, chap. 173. *Opinion of April* 22, 1845, 4 Op. 366.

PIRACY.

1. Piracy committed on the high seas, or out of the jurisdiction of a particular State, should be prosecuted in the district where the offender is apprehended or first brought. *Opinion of Aug.* 29, 1815, 1 Op. 185.

2. It is not piracy, under the act of 30th of April, 1790, chap. 9, for the captain of a vessel, to whom the vessel and cargo had been consigned, with instructions to proceed to the Pacific and there sell the vessel and cargo and remit the proceeds to the owners, to fail to remit such proceeds after having made sale according to instructions. *Opinion of Nov.* 28, 1825, 2 Op. 19.

3. Nor has the Government the right to order a captain thus in default to be seized and brought to the United States to be tried for his conduct. Such a seizure would be false imprisonment, for which the captain might recover damages. *Ibid.*

e acts of 23d April, 1800, chap. 33, ı, 1804, chap. 48, and 16th April, 56, one-half of the proceeds of ves- :d and condemned for piracy ought ver to the navy pension fund. *Opin-* 30, 1834, 2 Op. 648.

ecessary expenses of pilotage, main- c., incurred before the delivery of :o the civil authority, ought to be of the public Treasury, and not the proceeds of the captured vessel.

an armed schooner cannot be treated , under the act of 30th of April, 9, for capturing an American mer- ın the alleged ground that she was provisions, stores, and munitions he use of the army of Mexico, with ment of which Texas, at the time, te of revolt and civil war. *Opinion* 1836, 3 Op. 120.

ake the fire of one vessel into an- ıtical aggression within the statute , 1819, chap. 77, it must be a *first* unprovoked by any previous act of menace from the other side. *Opin-* 28, 1860, 9 Op. 456.

OSSE COMITATUS.

rshal of the United States, when the execution of his duty by un- binations, has authority to summon ble-bodied force of his precinct as *itatus*. *Opinion of May* 27, 1854, 6

uthority comprehends not only by- d other citizens generally, but any ınized armed force, whether militia e, or officers, soldiers, sailors, and the United States. *Ibid.*

object of resistance to the marshal ıct and defeat the execution of pro- he Constitution or of acts of Con- xpenses of such *posse comitatus* are ırgeable to the United States. *Ibid.* pts, in any State of the Union, to extradition of fugitives from serv- red by the principles of this opinion.

section 27 of the act of Sept. 24, 20, United States marshals derived an implied authority to summon the military forces of the United States as a *posse comitatus* to aid them in the execution of process, the exercise of which authority was sanctioned by long practice. But no express authority thus to summon the military forces is given by any law; and section 15 of the act of June 18, 1878, chap. 263, prohibits the employment of any part of the Army as a *posse comitatus*, except where such employment is "expressly authorized by the Constitution or by act of Congress." *Held*, accordingly, in a case where an organized, armed, and fortified resistance to the execution of the law existed, that the marshal cannot be aided by the military forces of the United States as a *posse comitatus*. *Opinion of Oct.* 10, 1878, 16 Op. 162.

6. The military forces may, however, be used in such case by direction of the President, under the provisions of sections 5298 and 5300 Rev. Stat., should he deem proper to take certain preliminary steps therein provided and if resistance to the law shall thereafter continue. *Ibid.*

POSTAL SERVICE.

See also CONTRACT; POSTMASTER-GENERAL.

I. *Generally.*
II. *Bids and Contracts for Carrying the Mail.—Subletting Contract.—Annulment of Contract.—Damages.*
III. *Mail Contractors.—Sureties.—Their Liability.*
IV. *Mail Transportation.—Extra Allowance.—Deduction for Non-performance of Service.*
V. *Compromise, &c., of Claim against Contractor.—Remission of Forfeiture of his Pay, &c.*
VI. *Foreign Mails.*
VII. *Matter Excluded from the Mail.*
VIII. *Postage.—Stamps.—Metric System.*
IX. *Delivery of Letters.—Letter Carriers.—Newspapers.*
X. *Detention of Mail Matter.*
XI. *Mail Depredations.—Special Agents.*

I. Generally.

1. The proviso in the act of March 3, 1841, chap. 35, requiring postmasters to make re-

turns of emoluments received from boxes, &c., is to be considered as taking effect from the date of the passage of that act; although such proviso is contained in a clause making an appropriation which does not become available until the commencement of the then next ensuing fiscal year. *Opinion of July* 11, 1841, 3 Op. 640.

2. The transmission by a private express of letters, packages, &c., over mail routes, is a violation of the acts of March 3, 1825, chap. 64, and March 2, 1827, chap. 61; and the district attorney should proceed to prosecute the offenders. *Opinion of March* 22, 1843, 4 Op. 159.

3. Nor is it competent for any stage or other vehicle which regularly performs trips on a post road, or on a road parallel to a post road, to convey letters; nor may such conveyance be made by any packet-boat or other vessel which regularly plies on a water declared to be a post road, except in respect to the letters that may relate to the cargo, or some part thereof, transported by such packet-boat or other vessel. *Opinion of Nov.* 13, 1843, 4 Op. 276.

4. Every person who aids and abets in the violation of the nineteenth section of the act of March 3, 1825, chap. 64, is liable to the penalty thereby incurred by the owners of stages, or persons having charge of stages or other vehicles, packet-boats, or other vessels therein described; and a person paying for the transportation of a letter by such stage, vessel, &c., is an aider and abettor within the twenty-fourth section of the act. *Opinion of April* 2, 1844, 4 Op. 311.

5. But the twenty-fourth section of the act of 1825 does not embrace the offenses denounced by the third section of the act of March 2, 1827, chap. 61. *Ibid.*

6. The act of March 3, 1845, chap. 43, reducing the rates of postage upon letters, &c., transported in the public mails, provides against embarrassment in the mail service on account of deficiency in its revenues, by placing a fund at the disposal of the Postmaster-General, to which he may resort in cases of necessity. *Opinion of June* 28, 1845, 4 Op. 392.

7. This fund should be applied to supply any deficiency which might be actually ascertained, and which might threaten to defeat the objects of the post-office establishment, subject to the proviso, that the expenditures for the Post-Office Department shall not, in the aggregate, exceed the annual amount of four million five hundred thousand dollars, exclusive of salaries of officers, clerks, and messengers of the General Post-Office, and of its fund for contingencies. *Ibid.*

8. The amount that may become due to Great Britain for postage on British letters collected in the United States, under existing postal arrangements with that Government, cannot be abated by the amount of compensation which shall be allowed to postmasters. *Opinion of Feb.* 15, 1851, 5 Op. 301.

9. The municipal ordinances of a city, prohibiting the passage of railroad cars through its limits at a greater speed than six miles per hour, do not conflict with the act of Congress of March 3, 1825, chap. 64, relative to the willful obstruction of mail carriers; and the carriers of the mail on the railroads are not exempt from their operation. *Opinion of June* 1, 1852, 5 Op. 554.

10. Letters in the custody of the post-office cannot be attached by process issuing from a State court. *Opinion of June* 8, 1852, 5 Op. 560.

11. A deputy postmaster or other officer of the United States is not required by law to become knowingly the enforced agent or instrument of enemies of the public peace, to disseminate in their behalf, within the limits of any one of the States of the Union, printed matter, the design and tendency of which are to promote insurrection in such State. *Opinion of March* 2, 1857, 8 Op. 489.

12. The act of July 2, 1836, chap. 270, does not forbid an employé of the Post-Office Department from supplying it, at agreed rates, with any device or improvement invented and patented by him that may be useful in the postal service. *Opinion of Jan.* 12, 1860, 10 Op. 2.

13. The act of March 3, 1871, chap. 121, prohibits the printing of black lines, marks, or characters, upon the envelopes furnished for the Post-Office Department, except the "return request." *Opinion of June* 28, 1871, 13 Op. 466.

14. An oral demand by a railroad company, through its authorized agent, for a readjustment of its account under the act of March 3, 1873, chap. 231, is sufficient in order to rebut the presumption of acquiescence in an adverse

ıling of the Post-Office Department, unless ıere is an established practice in the Depart-ent, having the force of law, by which such :mands are required to be made in writing. *pinion of Feb.* 10, 1879, 16 Op. 264.

:. Bids and Contracts for Carrying the Mail.—Subletting Contract.—Annulment of Contract.—Damages.

15. Where one of two or more contractors r transporting the United States mail shall ıve been guilty of a violation of the twenty-ghth section of the act of 2d July, 1836, chap. 0, changing the organization of the Post-Office epartment, and providing more effectually r the settlement of the accounts thereof, the ostmaster-General may annul the contract nd re-let the route according to law. *Opinion f March* 25, 1839, 3 Op. 436.

16. Guaranties in the form described by the)epartment, but executed without inserting he time prior to which the contract is to be xecuted, are not a legal compliance with the ct of July 2, 1836, chap. 270, requiring guar-nties to be made. *Opinion of Sept.* 10, 1839, Op. 475.

17. Where proposals in the usual form for ıe transportation of the mail between certain ecified points had been advertised and ac-pted without certain knowledge, on either de, that the condition of the roads was such hat coaches could pass over the route, and fter trial it was found that they were not uch as to permit the execution of said con-ract according to its terms: *Advised* that the ontractor be released from further obligations nder it, and that he receive compensation for ransporting the mail by steamboat. *Opinion f Nov.* 11, 1839, 3 Op. 492.

18. The act of July 2, 1836, chap. 270, pro-vides for the manner in which changes are to be made in the terms of any existing contract other than those having reference to additional service or increase of expedition. *Opinion of June* 1, 1840, 3 Op. 542.

19. Where the Auditor for the Post-Office Department was authorized to audit and settle the accounts of C. for carrying the mails, if the Attorney-General should be of the opinion that the Postmaster-General had not the right, under the contract with him, to make certain alterations in the mode of transporting them, and the question being submitted to the Attorney-General for instructions to the Auditor concerning the authority of the Postmaster-General to change the time, frequency, and mode of transporting the mails: *Held* that as the contract reserved to the Postmaster-General the right to discontinue the route whenever he should deem it useless, upon notice and the allowance of one month's extra pay, and as he concluded to discontinue it only a portion of the time, the contractor had an option, as soon as he received his notification, to renounce it entirely, and receive his month's pay in advance. *Opinion of Dec.* 31, 1842, 4 Op. 141.

20. But as he preferred going on with the service on the new terms, he has nobody to complain of but himself, and is entitled to be paid only for the services he has actually rendered. *Ibid.*

21. The claims of mail contractors for one month's extra pay, in cases where their contracts have been annulled and the service discontinued, are to be decided by the Postmaster-General, or by the Auditor of the Treasury for the Post-Office Department, as prescribed by the eighth section of the act of July 2, 1836, chap. 270. *Opinion of Aug.* 24, 1850, 5 Op. 246.

22. The Postmaster-General may obtain the opinion of the Attorney-General on such claims, yet his decision is equally conclusive, whether it shall be in accordance with or against such opinion, where one has been obtained. *Ibid.*

23. As the Postmaster-General is authorized by the fourteenth section of the act of 3d March, 1845, chap. 43, to contract, without advertising, for carrying mails by steamboats and railroads, he may disregard the bid for the route between Washington and Aquia Creek, made under an advertisement, and contract, without advertising, with the Fredericksburg and Potomac Railroad Company, to carry the mail by steamboat and railroad from Washington to Richmond. *Opinion of June* 12, 1851, 5 Op. 373.

24. The law in such special cases vests in the Postmaster-General a discretionary power. *Ibid.*

25. Where an act of Congress (that of Aug. 30, 1852, chap. 101) gave to a railroad company credit on certain railroad iron imported, the price to be paid in four years by set-off on

a contract for the transportation of the mails: *Held* that the Postmaster-General may contract anew with the same company for additional service at additional compensation, without requiring that the new compensation be charged to the debt for railroad iron due under the first contract. *Opinion of Aug.* 19, 1854, 6 Op. 668.

26. The acceptance, by a contractor for the transportation of the mails, of the liquidated damages of the contract is a waiver of all claims of damages on its rescission by the Postmaster-General. *Opinion of Aug* 2, 1856, 8 Op. 27.

27. The Post-Office Department has no power, without authority of law, to enforce a rule that bids for carrying the mails should not be withdrawn after a certain time, whether accepted or not. *Opinion of June* 21, 1858, 9 Op. 174.

28. A promise not to withdraw a proposal before the Department decides upon it is not binding in law on the bidder. *Ibid.*

29. A bid may be signed by the party without writing his name at the foot of the instrument. *Ibid.*

30. A withdrawal of a proposal must be ratified. *Ibid.*

31. Under a contract for carrying the mails between Cairo and New Orleans, agreeably to a schedule appended which regulates the time of arrival and departure only at the ends of the route, the Postmaster-General cannot be required to deliver the mails in Memphis at a particular hour of the day. *Opinion of Nov.* 10, 1858, 9 Op. 252.

32. Where proposals were invited for carrying the mail on a certain route and the contract was awarded to certain parties who afterward transferred it to others who were simply competitors at the bidding for the contract, it was *held* that the Postmaster-General had no authority to annul the contract under the statute providing for the dismissal of a mail contractor who shall have combined to prevent bidding for a mail contract. *Opinion of March* 29, 1859, 9 Op. 331.

33. Where a statute (the act of March 3, 1857, chap. 96) authorized the Postmaster-General to contract for the conveyance of the entire letter mail from a point on the Mississippi River to San Francisco for six years at a cost not exceeding $300,000 per annum for semi-monthly, $450,000 for weekly, or $600,000 for semi-weekly service, to be performed semi-monthly, weekly, or semi-weekly, at the option of the Postmaster-General; and where in pursuance of the statute a contract was made by the Postmaster-General with certain parties for that service, who agreed to perform it semi-weekly for the allowed maximum compensation, but which contract made no provision for any reduction of the service, nor for the carriage of the mails according to any other schedule; it was *held* that the Postmaster-General had no legal right to reduce the amount of service, and the compensation with it, below what was stipulated for in the contract. *Opinion of May* 28, 1859, 9 Op. 342.

34. If a mail contractor refuses, after being instructed, to give information as to the preparations made by him for the performance of his contract, his contract may be annulled by the Department. *Opinion of Sept.* 30, 1859, 9 Op. 392.

35. Under the act of January 13, 1857, chap. 8, authorizing the Postmaster-General to execute a contract with certain parties for carrying the mails from Cumberland to Greensburg, at the sum of $4,320 per annum, the Postmaster-General had authority to make a contract with those persons in the usual form and with the ordinary stipulations. *Opinion of Nov.* 22, 1860, 9 Op. 501.

36. The Postmaster-General, under the act of May 28, 1864, chap. 98, which authorized proposals for ocean mail steamship service between the United States and Brazil, accepted the bid of the "New York, Nuevitas and Cuba Steamship Company," chartered to carry freight, passengers, and mails between New York and Cuba. There were two other proposals for the contract. Afterwards, all the stockholders of that company formed a new corporation, with power to carry the mails between the United States and Brazil, and obtained the assent of the Postmaster-General to a change of the name of the company to that of the "United States and Brazil Mail Steamship Company." Six months subsequent to the award of the contract to the company, and after the formation of the new corporation, the next lowest bidder demanded that the contract be awarded to him, on the ground of want of legal capacity on the part of the company to perform the contemplated service: *Held* (1) that the

aster-General should have disregarded
posal of the "New York, Nuevitas and
Steamship Company"; (2) that he had
wer to execute a contract with the
ed States and Brazil Mail Steamship
ny", (3) that the objection urged by
ond bidder not having been made within
nable term, the contract could not be
d to him or to the third bidder; and
t, in due execution of the act, the Post-
-General should invite new proposals
service. *Opinion of June* 12, 1865, 11
5.

Semble that the clause in mail contracts
izing a discontinuance of the service by
stmaster-General on payment of one
's extra pay is inapplicable to a case
without any interference of the Post-
-General or any order on his part, the
r execution of the contract has become
ible or illegal. *Opinion of June* 11,
13 Op. 260.

Accordingly, the issue of an order by the
aster-General in May, 1861, under the
February 28, 1861, chap. 61, suspending
service in certain States then in insur-
, could not entitle a contractor for carry-
e mail in one of those States to a month's
virtue of such clause in his contract.

The Postmaster-General is not author-
o make any contracts for carrying the
ther than for "temporary service," ex-
nder or in pursuance of bids received,
nviting them by advertisement. *Opin-
July* 23, 1871, 13 Op. 473.

Where the lowest bidder at an "annual
g" fails to enter into contract and per-
service, the Postmaster-General cannot
y contract with the next lowest bidder
vill agree to perform the service at his bid
he whole term, without readvertising.

After once advertising, and failing to
e a contractor, a contract cannot lawfully
ade with a party who has not been a bid-
n a proposition informally submitted for
ontract term. *Ibid.*

The word "temporary," as used in the
ty-third section of the act of July 2, 1836,
270, should not be construed to author-
discretionary contract for a term extend-
beyond the time when the next annual
letting will take effect; except where the exi-
gency arises too late in the contract year for
the advertisement and letting to be completed
before the beginning of the next year, in which
case the right to make temporary contracts ex
tends through the succeeding year. (See NOTE,
13 Op. 477.) *Ibid.*

43. The certified check or draft deposited by
a bidder for the transportation of the mail,
under the requirements of the fourth section
of the act of March 3, 1871, chap. 121, where
the contract is awarded to such bidder, should
be returned as soon as he files an acceptable
bond to faithfully perform his contract. *Opin-
ion of July* 24, 1871, 13 Op. 477.

44. But if the check or draft was deposited
by a bidder whose proposal is not accepted, it
should be returned as soon as the contract is
awarded to another. (See NOTE, 13 Op. 478.)
Ibid.

45. A check or draft drawn upon a national
bank by a party offering proposals to transport
the mails, to whom the bank has issued a letter
of credit covering the amount of the check or
draft, and deposited with the Postmaster-Gen-
eral accompanied by the letter, is a sufficient
compliance, to the extent of such amount,
with the requirement of section 4 of the act of
March 3, 1871, chap. 121. *Opinion of Oct.* 18,
1871, 13 Op. 534.

46. Section 14 of the act of March 3, 1845,
chap. 43, gives the Postmaster-General excep-
tional authority to contract for steamboat serv-
ice in certain cases, and under it he has the
power to contract at once for that sort of serv-
ice, without the advertisement and formalities
prescribed in the case of general service. (See
NOTE, 13 Op. 566.) *Opinion of Jan.* 6, 1872,
13 Op. 565.

47. The fourth section of the act of June 14,
1858, chap. 164, applies to mail-service by sea
between the United States and foreign coun-
tries, and not to that between ports or places
within the limits of the United States; hence
it is inapplicable to the route from San Fran-
cisco, Cal., by sea, to San Diego, Cal., and in
letting mail contracts for this route the Post-
master-General is not to be governed thereby.
Opinion of Jan. 17, 1872, 14 Op. 585.

48. Nor does section 14 of the act of March
3, 1845, chap. 43, apply to contracts for carry-
ing the mail over that route. *Ibid.*

49. It is the duty of the Postmaster-General,

before contracting for regular mail-service upon said routes, to advertise as required by the tenth section of the act of March 3, 1825, chap. 64, and its supplements. *Ibid.*

50. The eighteenth section of the act of March 3, 1845, chap. 43, makes it the duty of the Postmaster-General, in every case, to let contracts for mail-service to the lowest bidder offering a sufficient guarantee for the performance of the same. But the statute is to receive a reasonable construction; and inasmuch as payment of a less amount than one cent cannot, practically, be made by the Government, that constitutes the lowest amount at which a bid can be entertained by the Postmaster-General. *Opinion of July* 6, 1872, 14 Op. 56.

51. Accordingly, as between two bidders for carrying the mail over a particular route for a certain period, one of whom offered to perform the service for *one-fourth of a cent* and the other for *one cent: Held* that the latter is the only bid of the two which is entitled to acceptance. *Ibid.*

52. A certified check drawn by a bidder, payable to the order of the person who at the time is Postmaster-General, but omitting any reference to his official position, does not meet the requirements of section 253 of the act of June 8, 1872, chap. 335; the official designation should accompany the name. *Opinion of Feb.* 24, 1874, 14 Op. 632.

53. Where such check is drawn payable to the bidder or a third party, and by him indorsed payable to the order of the Postmaster-General, this is a sufficient compliance with said section. *Ibid.*

54. A single check will not suffice for several persons bidding for distinct routes. *Ibid.*

55. The substitution of bank-notes or other currency for a certified check, to accompany the bid, is inadmissible. *Ibid.*

56. *Quære*, where a single certified check, less in amount than is required by the statute, accompanies the bid of one person for *two* or more routes, whether it may authorize a contract for any *one* of such routes if it be sufficient in amount for the same taken singly. The Attorney-General inclines to the opinion (differing herein from the view of the Solicitor-General) that the Postmaster-General may accept the check and award a contract in such case. *Ibid.*

57. A check in the following form: "Pay to John A. J. Creswell, Postmaster-General, or order, nine hundred dollars, provided the bid of A. B. is accepted on route No. —, and he fails to enter into contract for the same; and in case bid is not accepted nor contract is made, check to be returned to drawer": *Held* inadmissible, the proviso thereto invalidating it. *Ibid.*

58. The act of June 8, 1872, chap. 335, furnishes the exclusive rule for determining what mail contracts do, and what do not, require previous advertisement. *Opinion of April* 15, 1874, 14 Op. 651.

59. Previous advertisement is required by that act in all cases other than those which are therein excepted; and among the latter the case where a route has been left vacant by the actual or virtual abandonment of a contract partially performed is not included. *Ibid.*

60. In such case the Postmaster-General may make a new contract only after previous advertisement, and he has in the meantime no power to make intermediate provision without advertisement. *Ibid.*

61. Where the Postmaster-General advertised for proposals for carrying the mail on route number 43132, "from Portland, by Port Townsend and San Juan, to Sitka and back," stating the frequency of the service, &c., as required by section 243 of the act of June 8, 1872, chap. 335; and then, under the same number, added, "Proposals invited to begin at Port Townsend, five hundred miles less": *Held* that an offer to carry the mail, in response to the latter, cannot be regarded as a bid after due advertisement made, such as would authorize a contract to be awarded thereon; the time and frequency of the service "to begin at Port Townsend" not having been specified in the advertisement. *Opinion of April* 22, 1874, 14 Op. 389.

62. The law requires due advertisement as well as due proposal, and no amount of precision in the latter can obviate a want of compliance with the law in the former. *Ibid.*

63. The contract entered into with the Pacific Mail Steamship Company by the Postmaster-General, on the 27th of August, 1872, under the provisions of the act of June 1, 1872, chap. 256, whereby the former undertook to transport the mails between the United States and China and Japan in American steamships of a certain class and construction, for ten

years, commencing on the 1st of October, 1873, is still obligatory upon the Government, in view of the facts and circumstances presented, notwithstanding the failure on the part of the company to have vessels like those specified in the contract ready for use on the date last mentioned. *Opinion of Aug.* 3, 1874, 14 Op. 675.

64. It was not an essential part of the contract that the new vessels should be furnished by that date, if it then satisfactorily appeared that they would be furnished within a reasonable time thereafter; and, taking into consideration the action and conduct of the Government officers, it would not be right, now that the vessels have been completed and offered for inspection, to refuse to receive them into service under the contract merely because they were not furnished at that time; besides, looking at the primary objects of the act of 1872, it would be subordinating these to unimportant matters so to do. *Ibid.*

65. Where the Postmaster-General advertised for proposals for furnishing the Post-Office Department with stamped envelopes, the advertisement reserving to him "the right to reject any and all bids, if in his judgment the interests of the Government required it": *Held* that it was competent to the Postmaster-General to make such reservation and to act upon it. *Opinion of Sept.* 16, 1874, 14 Op. 682.

66. Where the Postmaster-General was authorized by statute to advertise for proposals to perform certain ocean mail service in steamships of not less than 3,000 tons burden; and, after due advertisement, a steamship company proposed to perform the service at a certain price in steamships of from 3,500 to 4,000 tons burden, which offer was accepted and a contract made accordingly: *Held* that the Postmaster-General cannot accept and pay, under such contract, for service done in steamships of less burden than that stipulated, although they are over 3,000 tons burden. *Opinion of April* 4, 1876, 15 Op. 556.

67. Proposals for carrying the mail on route No. 43132 were made by G. and accepted, but were subsequently suspended, and contract was made with O. for the full term. Suit against the United States was brought by G. in the Court of Claims, claiming damages for breach of contract, which resulted in a judgment in his favor. Thereupon G. filed an application in the Post-Office Department that he be permitted to perform the service on said route according to his proposal for the balance of the contract term: *Advised* that the rights of G. under his proposal having been ascertained by the judgment recovered, he has no legal right to the service; but that, as the contract with O. for the full contract term was irregular and unfounded in law, there is no legal objection to terminating the service with the latter, and accepting a contract with the former in accordance with his application, should the Postmaster-General be of opinion that the public interests will be served thereby. *Opinion of Feb.* 22, 1877, 15 Op. 616.

68. Where a mail contractor, after having correspondence with another person preliminary to subletting his contract with him, which contemplated an agreement to be thereafter made between them, orally agreed with such person as to the details of the service and the amount the latter was to receive for the performance thereof: *Held* that this did not constitute such a subcontract as is provided for by section 3 of the act of May 17, 1878, chap. 107. *Opinion of March* 7, 1879, 16 Op. 280.

69. An oral contract is not sufficient to entitle the subcontractor to the benefit of that section. *Ibid.*

III. Mail Contractors.—Sureties.—Their Liability.

70. Mail contractors have no authority to carry newspapers or pamphlets other than in the mail, except by authority of the Postmaster-General, and in pursuance of a contract made for that purpose. *Opinion of Nov.* 13, 1843, 4 Op. 276.

71. Mail contractors are also by their contracts and the regulations of the Post-Office Department collecting agents, and are bound to due diligence as such. *Opinion of Aug.* 2, 1856, 8 Op. 24.

72. A mail contractor cannot draw pay for services or work rendered or done prior to his taking the oath prescribed by the act of March 3, 1863, chap. 71. *Opinion of June* 5, 1866, 11 Op. 498.

73. A mail contractor, after executing separate contracts in due form to convey the mails on four different routes, entered upon and continued the performance of service on two of them, but on the other two he failed to do any service, and the Post-Office Department was

compelled to employ other parties to carry the mails on the last-mentioned routes at an increased rate of compensation, the difference being charged as usual to the first contractor. For administrative purposes merely, and not with any intention to release the first contractor from liability, an order was made to annul the two contracts which he had failed to perform: *Held* that, under the circumstances stated, such contractor was not thereby discharged from any claim growing out of those contracts which the United States would otherwise have against him. *Opinion of March* 23, 1872, 14 Op. 18.

74. *Semble* that it is a violation of section 5474 Rev. Stats., for a mail contractor to employ an express company not under his control to carry mail matter committed to his charge. *Opinion of Dec.* 29, 1875, 15 Op. 70.

75. Section 2 of the act of May 17, 1878, chap. 107, which forbids any subletting or transfer of a mail contract without the written consent of the Postmaster-General, and declares that any sublease or transfer without such consent shall be deemed a violation of the contract and authorize new advertising for the same, and, furthermore, that the contractor and his sureties shall be liable for any damages thereby resulting to the United States, does not impose any greater liability on the sureties upon contracts already existing than the one which they originally incurred. *Opinion of July* 9, 1878, 16 Op. 61.

76. Nor is any greater liability than that originally incurred imposed on such sureties by section 3 of the same act, which provides for the case where there has been a lawful subletting of a mail contract, and protects the subcontractor. But the provisions of this section are not to be so construed as to diminish the rights which the sureties have upon the amount that had become due the original contractor before such subletting. *Ibid.*

77. The requirements of sections 2 and 3 of said act are applicable to all mail contracts, including as well those already existing or awarded as those which may be entered into in future. *Ibid.*

IV. Mail Transportation.—Extra Allowance.—Deduction for Non-performance of Service.

78. The act of a Postmaster-General in making extra allowances to mail contractors in consequence of alterations made, after the execution of the contract, in the frequency and speed of the conveyances used for transportation, and on account of the increased weight of the mailed matter, are not, where the account is still open, conclusive upon his successor; on the contrary, the latter possesses competent authority to look into such allowances, and when he finds them to have been founded on material errors of law or fact, to correct them as justice shall appear to require. *Opinion of Oct.* 10, 1835, 3 Op. 2.

79. Contracts to carry the mail of the United States, without stipulation as to its weight, include the whole mail accruing between the *termini* named therein, or coming into it from other routes, according to the arrangements contemplated when they are made; and if justice shall demand extra allowance on account of the increased weight, it must be sought of Congress, not of the Postmaster-General. *Ibid.*

80. If extra compensation to contractors shall have been paid by one Postmaster-General, without the sanction of an act of Congress, the money so paid may be recovered back. *Ibid.*

81. The acts of March 3, 1825, chap. 64, and July 2, 1836, chap. 270, do not authorize the payment of additional compensation to contractors for transporting the mail in cases where the time of the transit only is changed, even though additional conveyances shall be required, but where the mail is carried between the same *termini* no oftener, and there is no increase of expedition on the route. *Opinion of June* 1, 1840, 3 Op, 542.

82. The compensation to be rendered under the contract with A. G. Sloo, for the transportation of the mail in steam-vessels, ought to be in proportion to the service performed and accepted, without regard to the number of steamships employed in that service, or that have been built under that contract. *Opinion of Oct.* 15, 1850, 5 Op. 271.

83. Inasmuch as Congress has appropriated the money and directed payment to be made for said service, payment, notwithstanding certain advances, should be made. *Ibid.*

84. The refunding of the advances must be considered as deferred, and left to the future discretion of Congress. *Ibid.*

85. The provision of the act of Congress of March 3, 1855, chap. 201, allowing additional

compensation to Giddings on a mail contract, does not require payment to him individually unless due to him; it is additional on the contract only so far as performed. *Opinion of Jan.* 16, 1856, 7 Op. 617.

86. That addition does not affect any previous contract with other parties on the same route; they are to be paid according to the general law. *Ibid.*

87. Collins & Co. agreed with the Navy Department to build a certain number of steamships and to carry the United States mails upon them. The ships were built accordingly. But some of them were wrecked, and in place of one of them an inferior vessel was substituted, with the consent of the Secretary: *Held* that no deduction could lawfully be made from their pay for carrying the mail on this account. *Opinion of June* 4, 1857, 9 Op. 33.

88. The contract containing no provision for any forfeiture of pay except when a whole trip was lost, the slowness of the voyages did not justify a deduction, provided they were regularly made. *Ibid.*

89. The loss of the vessels that were wrecked did not justify a deduction, because Collins & Co. complied with their contract in building them and were not insurers of them against the perils of the sea. *Ibid.*

90. The fourth section of the appropriation act of June 14, 1858, chap. 164, does not affect the carrying of mails destined for ports of the United States, and not subject to sea postage. *Opinion of June* 26, 1858, 9 Op. 179.

91. Under the act of March 3, 1845, chap. 43, the maximum allowance for the conveyance of any number of mails in the day-time is three hundred dollars per mile. *Opinion of March* 16, 1859, 9 Op. 295.

92. Under the act of June 21, 1860, chap. 165, the Postmaster-General is required to increase the service on the mail route between Sacramento, Cal., and Portland, Oreg., and raise the compensation therefor, without any reference to the mail service, from Portland to Olympia, Washington Territory. *Opinion of July* 10, 1860, 9 Op. 434.

93. The Pittsburgh, Cincinnati and Saint Louis Railroad Company is entitled to nothing for mail service beyond what has been paid thereto according to established usage prior to July 1, 1873. But having protested against the continuance of that method of adjustment after July 1, 1873, claiming compensation in accordance with the terms of the act of March 3, 1873, chap. 231, the company is entitled for this period to compensation as claimed. *Opinion of March* 6, 1876, 15 Op. 75.

94. Where two railroad corporations run from their point of junction to a common terminus (over the same track) separate trains, with postal cars, carrying the mails, and route-agents to accompany the same, each such corporation is entitled, under the act of March 3, 1873, chap. 231, to be paid at the rates thereby provided for the average weight of mails carried by it to the common terminus. *Opinion of May* 6, 1876, 15 Op. 92.

95. Railroad companies, carrying the mails under the arrangement and classification of the Postmaster-General, agreeably to the law as it existed prior to March 3, 1873, cannot now claim additional compensation. *Ibid.*

96. The compensation to railroad companies authorized to be fixed by sections 4002 to 4005 Rev. Stat., for the use of railway post-office cars furnished by them, is not affected by the provisions of the first section of the act of July 12, 1876, chap. 179. *Opinion of Oct.* 7, 1876, 15 Op. 169.

97. Case of the Baltimore Central Railroad Company, and also of the Delaware Branch Railroad Company, concerning mail transportation between Philadelphia and Chester by the former company and between Philadelphia and Wilmington by the latter company—service by each company performed over the track of the Philadelphia, Wilmington and Baltimore Railroad Company, over which this last-mentioned company at the same time transported the mail: *Held* to be governed by the principles applied to the case of the Rockford, Rock Island, &c., Railroad Company, in the opinion of the Attorney-General of May 6, 1876, 15 Op. 92. *Opinion of Nov.* 23, 1876, 15 Op. 598.

98. The provision in the act of July 12, 1876, chap. 179, directing the Postmaster-General to make a 10 per cent. reduction of the compensation to railroad companies for carrying the mails, operates prospectively, and does not affect existing contracts which were authorized by the law in force at the time of their execution. As to these, the rate remains as stipulated during the period fixed by the agreement. *Opinion of Dec.* 21, 1876, 15 Op. 182.

99. Case of the Philadelphia, Wilmington and Baltimore Railroad Company, the Baltimore Central Railroad Company, and the Delaware Railroad Company, for mail transportation performed over the track of the first-named company, which was considered in opinion of November 23, 1876 (15 Op. 598), reviewed upon additional facts furnished; and *held* that the periodical settlements heretofore made by the Philadelphia, Wilmington and Baltimore Company with the Post-Office Department, agreeably to an arrangement between the three companies, for the whole of such mail-service over the common track, from 1873 to 1876, ought to stand. *Opinion of Feb.* 1, 1877, 15 Op. 602.

100. The view of the Attorney-General, expressed in an opinion dated May 6, 1876 (15 Op. 92), that there may be several post-office routes over the same railroad track, does not at all forbid that several railroad companies using the same track may so far be serving but one post-office route. *Ibid.*

101. During the railroad troubles (labor strikes) of 1877, the Michigan Central Railroad Company (with which there was a written contract for mail service, containing special provision as to forfeiture of pay) and the Cleveland and Pittsburgh Railroad Company (with which there was no contract in writing, but which was engaged in the performance of "recognized service" in the conveyance of the mail) failed to transport the mail over their respective roads for a day or two, on account of which deductions were made from their pay: *Held* that it was competent to the Postmaster-General to make the deductions in both cases. *Opinion of Jan.* 30, 1878, 15 Op. 441.

102. Upon the facts stated in the opinion, the mail transportation performed by the Chicago, Burlington and Quincy Railroad Company subsequently to July 1, 1875, was (not service under a contract, but) "recognized service"; and the action of the Postmaster-General, on the 16th of October, 1876, abating the rate payable to the company 10 per centum, in accordance with the provisions of section 1 of the act of July 12, 1876, chap. 179, was proper. *Opinion of April* 13, 1878, 15 Op. 482.

103. *Advised* that the Postmaster-General, in adjusting the rates of compensation to be allowed the Union Pacific Railroad Company for carrying the mails, apply the same rules that Congress has made applicable to railroad companies in general (see acts of March 9, 1873, chap. 231, July 12, 1876, chap. 179, and June 17, 1878, chap. 259), until the Supreme Court shall have made an authoritative settlement of the questions raised by that company—concurring in opinion of Feb. 16, 1877 (15 Op. 610). *Opinion of Oct.* 31, 1878, 16 Opin. 197.

V. Compromise, &c., of Claim against Contractor.—Remission of Forfeiture of his Pay, &c.

104. As the principle of *res judicata* must be adopted as a general rule for the Executive Departments, the Postmaster-General should not meddle with any case of forfeiture finally disposed of on deliberate examination by his predecessors. *Opinion of Oct.* 28, 1841, 3 Op. 684.

105. But the Postmaster-General is vested with a discretion concerning forfeitures not passed upon. *Ibid.*

106. The Auditor of the Treasury for the Post-Office Department, with the written consent of the Postmaster-General, has the power under the third section of the act of March 3, 1851, chap. 21, to compromise, release, and discharge a claim for a penalty for the violation of the postal laws. *Opinion of Nov.* 25, 1871, 13 Op. 540.

107. The provisions of the eighth section of the act of June 8, 1872, chap. 335, clearly imply the existence of authority in the Postmaster-General to remit a forfeiture or deduction arising out of a contract for the transportation of the mail; the language of the two hundred and sixty-sixth section of the same act also implies a discretion in that officer to make a deduction or not from the pay of mail contractors for failure to perform service according to contract; and by the three hundred and sixteenth section of the same act the Auditor for the Post-Office Department may mitigate or remit any fine, penalty, or forfeiture arising out of the operations or business of the postal service, with the written consent of the Postmaster-General. *Opinion of Jan.* 29, 1873, 14 Op. 179.

108. Where the agreement with a mail-contractor contains the usual stipulation that "in all cases there is to be a forfeiture of the pay of a trip when the trip is not run," &c.: *Held*, in view of the above provisions, that it is competent to the Postmaster-General to waive the forfeiture thereby provided for, in any case

arising upon the agreement, according as it may seem to him just and proper to do so under the particular circumstances of the case. *Ibid.*

109. Where it appeared that a mail contractor was of unsound mind when he executed contracts for carrying the mail over certain routes, and also when he signed the bond of another person who was nominally contractor for carrying the mail over another route, but the real party in interest was the contractor first mentioned; and, by the failure to carry out each of the contracts, damages accrued to the United States: *Held* that, in order to the exercise of the discretionary power conferred by section 409 Revised Statutes upon the Postmaster-General to compromise, release, or discharge claims in behalf of the Government arising under the postal laws, the "fact" to be ascertained in the case is not the mental condition of the mail contractor, but whether the interests of the Post-Office Department require the exercise of such power. *Opinion of May* 1, 1880, 16 Op. 484.

VI. Foreign Mails.

110. The act of March 3, 1845, chap. 69, providing for the transportation of the mail between the United States and foreign countries, is not repealed by the act of June 19, 1846, chap. 31. *Opinion of April* 30, 1852, 5 Op. 543.

111. The contractors for the transportation of the mails to and from New York and Liverpool are not entitled to the contract rate of compensation, unless the service be performed according to contract, in respect of the number as well as the quality of the vessels required for the service. *Opinion of Feb.* 25, 1857, 8 Op. 409.

112. A contract with the Postmaster-General for carrying the mail to a foreign country, which, by its terms, is to commence when it is ratified by Congress, and to be void in case such ratification is withheld, does not bind either party until the ratification stipulated for is given. *Opinion of April* 7, 1857, 9 Op. 11.

113. In such a case, if Congress does not ratify the contract, the contractor has no right to carry the mails, and the Postmaster-General has no lawful authority to permit letters or packages to be transported by him from one post-office to another. *Ibid.*

114. Such a contract does not bind the Postmaster-General who makes it, or his successor to recommend the ratification of the contract to Congress. *Ibid.*

115. If the Postmaster-General be of opinion that such a contract is unwise and impolitic, it is his duty to denounce it as such in his report. *Ibid.*

116. Neither the expression of an opinion in favor of such contract by the Postmaster General, nor his order to the postmasters not to deliver mail matter to the contractor, can be regarded as a bargain, rescission, or violation of the contract. *Ibid.*

117. The third section of the act of June 14, 1858, chap. 164, appropriating for transportation of the mails from New York via Southampton to Havre during the year ending June 30, 1859, any money in the Treasury arising from the revenues of the Post-Office Department, has no application to a contract made subsequently to the date of the act; but payment for service under such a contract may be made out of any unappropriated moneys under the fourth and fifth sections of the statute. *Opinion of May* 28, 1859, 9 Op. 340.

118. The authority of the Postmaster-General to pay for the mail service, specified in section 5 of the act of June 14, 1858, chap. 164, out of any money not otherwise appropriated, is plain, positive, and independent of any limitation in the act of July 2, 1836, chap. 270. *Opinion of Aug.* 4, 1859, 9 Op. 382.

119. The contract intended to be authorized by the act of July 27, 1868, chap. 260, with the Commercial Navigation Company of New York, is for the exclusive transportation of all the European and foreign mails of the United States by it, in weekly or semi-weekly lines, and between either New York and Bremen, or between New York and Liverpool, as may be agreed, excluding all such transportation by other lines or upon more frequent days. *Opinion of Oct.* 10, 1868, 12 Op. 511.

120. The words "United States mail-packets," as used in the postal convention between the United States and France of March 2, 1857, mean such steamships or vessels, sailing on regularly-appointed days, as are engaged by the United States to carry the mail; they denote the *employment* of the steamship or vessel, not its *nationality*. *Opinion of April* 29, 1875, 14 Op. 565.

121. Hence the steamships of the Hamburg and American Packet Company, which were employed by the Post-Office Department to carry the mail between the United States and France, either directly or by way of Great Britain, were "United States mail-packets" within the meaning of those words as used in the said postal convention, and their employment for that purpose was consistent with the terms of that convention. *Ibid.*

122. An American steamship company having contracted to transport the United States mail between Shanghai and Yokohama, sublet the contract to a Japanese company, the latter company chartering from the former an American vessel, officered by citizens of the United States, and carrying the United States flag, to perform the service, with an agreement to purchase the vessel at the close of the contract term. Under this arrangement the mail was transported for a quarter: *Held* that payment for this service should be made according to the terms of the original contract. *Opinion of April* 19, 1876, 15 Op. 558.

VII. Matter Excluded from the Mail.

123. The statute of July 27, 1868, chap. 246, prohibiting the mailing of letters or circulars concerning lotteries, cannot be safely executed by postmasters in all cases without additional legislation. *Opinion of Dec.* 7, 1868, 12 Op. 538.

124. Under section 3894 Rev. Stat., as amended by section 2, of the act of July 12, 1876, chap. 186, letters or circulars concerning legal as well as those concerning illegal lotteries are authorized to be excluded from the mails. *Opinion of March* 3, 1877, 15 Op. 203.

125. The Postmaster-General is not authorized, under section 3894 Rev. Stat., to direct the postmaster at New Orleans to withhold from the mails letters *suspected* to contain advertisements of lotteries. *Opinion of Aug.* 30, 1878, 16 Op. 5.

126. Section 3895 Rev. Stat. does not constitute a postmaster a seizing or detaining officer of suspected letters. It confers no power to seize or to detain, but merely directs the disposition to be made of letters "seized or detained for violation of law" under other statutory provisions. *Ibid.*

VIII. Postage.—Stamps.—Metric System.

127. No charge besides that specifically provided by the fifteenth section of the act of March 3, 1825, chap. 64, can be imposed on letters or packets carried from or to New Orleans, or any other port in the United States, in any private vessel. *Opinion of Jan.* 30, 1830, 2 Op. 313.

128. The waters of the United States, which in law are post roads, are those between ports where steamboats are accustomed to pass in a course of habitual traffic; and the postage of letters so carried is chargeable at the same rate as for the transportation of letters over the established post roads. *Ibid.*

129. The contents, rather than the form and dimensions of publications, should be the criterion for determining the rates of postage chargeable thereon. *Opinion of July* 22, 1845, 4 Op. 408.

130. By the act of March. 3, 1851, chap. 20, to reduce and modify the rates of postage in the United States and for other purposes, weekly newspapers only can circulate in the mail free of postage in the counties respectively where the same are published. *Opinion of June* 11, 1851, 5 Op. 371.

131. The postage chargeable on weekly newspapers, circulated without the counties, respectively, in which they are published, should be computed from the place of their publication. *Ibid.*

132. The act of Congress of March 3, 1855, chap. 173, entitled "An act further to amend the act entitled 'An act to reduce and modify the rates of postage in the United States, and for other purposes,'" takes effect at the commencement of the next fiscal quarter generally, but not until January in regard to the particular of requiring postmasters to place stamps on prepaid letters. *Opinion of March* 8, 1855, 7 Op. 58.

133. In what cases postmasters shall be held and in what cases not for stamps sent to them and not sold or returned to the Department. *Opinion of Sept.* 28, 1857, 9 Op. 105.

134. Letters on which postage has not been fully prepaid at the time of mailing therein should be charged at the office of delivery only with the amount of the deficiency. *Opinion of Feb.* 9, 1873, 14 Op. 186.

135. Meaning of the words "one full rate of postage," and also of the words "unpaid rate," as employed in section 151 of the act of June 8, 1872, chap. 335, explained. *Ibid.*

136. That section only applies when mail-matter is deposited in the post-office, chargeable with two or more rates, one of which, at least, has been paid; and in regard to such matter both the paid and the unpaid rates are governed by the same standard. *Ibid.*

137. The provision in section 3880 Rev. Stat., declaring fifteen grammes of the metric system to be the equivalent of a half-ounce avoirdupois, does not apply to all postal matter. Its application is limited to mail matter between this and foreign countries, on which the rates of postage are determined by weight according to the metric system. *Opinion of April* 11, 1877, 15 Op. 224.

138. The Lakeside Library, a literary paper printed and published periodically in parts or numbers at definite intervals, is a periodical publication within the meaning of section 5 of the act of June 23, 1874, chap. 456, and when addressed to news agents or regular subscribers is entitled to pass at a rate of postage prescribed for "periodical publications." *Opinion of July* 28, 1877, 15 Op. 346.

139. The Missionary Herald, a paper issued less often than once a week—the publication office whereof is in Boston, Mass., but its subscription list as to Boston and the adjacent towns is owned by a newsdealer in Brookline, Mass., from whence all copies intended for subscribers in Boston are mailed by him—is chargeable, under section 5 of the act of June 23, 1874, chap. 456, only with pound rates on the copies so mailed. *Opinion of Dec.* 19, 1878, 16 Op. 233.

140. But that section and section 3872 Rev. Stat. are to be construed together; and accordingly, where newspapers are deposited in an office within the same post-office district within which the subscribers live, they are chargeable at the rate of one cent a copy. *Ibid.*

141. The words "regular publications designed primarily for advertising purposes" in the *proviso* of section 14 of the act of March 3, 1879, chap. 180, mean publications chiefly or principally designed for advertising purposes. Whether or not the chief or principal design of any publication is for such purposes, is a question of fact which must be determined by the Postmaster-General in each individual case from the evidence he may be able to obtain. *Opinion of April* 15, 1879, 16 Op. 303.

IX. Delivery of Letters.—Letter-Carriers.—Newspapers.

142. According to the usage of the commercial world, a newspaper is defined to be a publication in numbers, consisting commonly of single sheets, and published at short and stated intervals, conveying intelligence of passing events. *Opinion of March* 18, 1842, 4 Op. 10.

143. Thus an English stamp act declared all periodical pamphlets, or papers, published at intervals not exceeding two days, containing public news, intelligence, or occurrences, or any remarks thereon, and not containing more than two sheets, published for less than sixpence, to be newspapers. *Ibid.*

144. The only indispensable requisites of a newspaper in this country are that it be published for everybody's use, in numbers, conveying news in sheets in a cheap form. *Ibid.*

145. The New York Bank-Note List is a pamphlet within the meaning of the act of March 3, 1825, chap. 64, and should be rated as such. *Opinion of Jan.* 22, 1844, 4 Op. 302.

146. To entitle any publication to the privileges of a newspaper, its main object and purpose must be the dissemination of intelligence of passing events; it must be issued in numbers consisting of not more than two sheets, whose superficies do not exceed 1,900 inches, at short stated intervals of not more than one month. *Opinion of July* 22, 1845, 4 Op. 408.

147. Littell's "Living Age" is a magazine. *Ibid.*

148. The word "periodicals," as used in a certain provision of the act of March 3, 1851, chap. 20, is not to be understood and construed to comprehend newspapers. *Opinion of May* 28, 1851, 5 Op. 371.

149. Whether the publication called "Littell's Living Age" ought to be rated as a newspaper depends upon facts not within the official knowledge of the Attorney-General, and upon which he cannot express an opinion. *Opinion of June* 13, 1851, 5 Op. 376.

150. Its size, contents, times of publication, and other characteristics, are material to a correct solution of the question, which is one

of fact rather than of law, and reference should be had to lexicographers. *Ibid.*

151. H. D. Bacon, a member of the firm of Page & Bacon, of Saint Louis, and also of that of Page, Bacon & Company, of San Francisco, applied to the Postmaster-General for an order to the deputy postmaster of the city of New York, that all the correspondence of the firm in San Francisco, addressed to their several agents in the Atlantic and Western States, and daily expected in New York by the steamer bringing the mails from San Francisco, should be delivered to him, H. D. Bacon: *Held* that the writer of a letter has no such general property in it as to entitle him in every case to reclaim it while *in transitu*. *Opinion of March* 28, 1855, 7 Op. 76.

152. Exceptional cases may exist of right to reclaim a letter in the analogy of the cases of stoppage *in transitu* by the law merchant; but all such cases are exceptional, each depending on its own special merits; and there is no authority in law for the issue of the order asked in this case of the Postmaster-General. *Ibid.*

153. A person who intends to make the carrying of letters periodically for hire his regular business, or part of his business, in opposition to the public carriers, is legally incapable of receiving authority to take letters out of the post-office for that purpose, however such authority may be attempted to be conferred. *Opinion of June* 3, 1858, 9 Op. 161.

154. The Post-Office Department has authority to make a regulation which will prevent the service from being prostituted to purposes of fraud. *Opinion of July* 24, 1860, 9 Op. 454.

155. It may order the non-delivery of letters addressed to persons under names which are known to have been assumed as part of a system to defraud the public. *Ibid.*

156. But the fraudulent intent in any case ought to be very clear before such an order is enforced. *Ibid.*

157. Under the act of August 30, 1852, chap. 98, the publisher of a weekly newspaper has no right to send through the mails, free of postage, newspapers deliverable to resident subscribers. *Opinion of Oct.* 16, 1860, 9 Op. 478.

158. Where a letter is sent through the post-office to one person in care of another, it is the duty of the postmaster to deliver the letter to the former if requested by him. *Opinion of May* 1, 1867, 12 Op. 136.

159. The postmaster has no authority in such a case to deliver the letter to the sheriff upon an attachment levied at the suit of creditors of the person to whom the letter is addressed. *Ibid.*

160. Where letters addressed to a business firm which had ceased to exist, having reached their destination through the mail, were claimed by different parties, and some of the claimants, in order to ascertain their right in the premises, subsequently instituted a suit against the others in the local court, and obtained an order from the court enjoining the postmaster from delivering the letters in accordance with previous instructions of the Postmaster-General: *Advised* that the postmaster be directed to respect the order of the court by retaining the letters, and to deliver them to the parties who shall be finally determined by the court to be legally entitled thereto. *Opinion of March* 25, 1871, 13 Op. 395.

161. Reconsideration of the case mentioned in opinion of March 25, 1871 (13 Op. 395), upon additional information since received. And it appearing that the order of the court there referred to not only enjoined the postmaster from delivering the letters in controversy to one of the contending parties, but commanded him "to refrain from withholding them" from the other party to the suit: *Advised*, further, that the postmaster be directed to disregard the latter branch of the said order. *Opinion of April* 7, 1871, 13 Op. 406.

162. Where a letter was received by mail at a post-office, addressed to a young lady over eighteen but under twenty-one years of age, which is claimed by her and also by her guardian: *Advised* that the postmaster be directed to deliver it to the young lady, as this course would best meet the requirements of the postal laws. *Opinion of Aug.* 1, 1871, 13 Op. 481.

163. Any rights which the guardian has, by the laws of the State, over correspondence of the ward, can be exercised after the letter is delivered by the postmaster to the ward. *Ibid.*

164. The citizens of the city of Davenport, Iowa, are not prohibited by the act of June 8, 1872, chap. 335, from employing a private dispatch-company to carry and deliver, within the city limits, sealed letters on which no United States postage has been paid; it ap-

pearing that the free delivery of mail-matter has not been established there, and that, accordingly, the streets of the city are not post-routes. *Opinion of Dec.* 18, 1872, 14 Op. 152.

X. Detention of Mail Matter.

165. Letters transported on the mail routes by private carriers cannot be charged with postage. Nor is it competent to detain a carpet-bag containing letters carried on a mail route contrary to law. *Opinion of Nov.* 15, 1844, 4 Op. 349.

166. All that the Department can do is to enforce the penalties to which all unauthorized carriers of letters are subjected. *Ibid.*

167. Where parties are engaged in practicing gross fraud upon the public, through the agency of the mails, it is competent for the Postmaster-General to adopt measures and issue instructions to the end of preventing the postal service from being made a means for the accomplishment of the unlawful purpose. *Opinion of May* 5, 1868, 12 Op. 399.

168. No authority is conferred upon the Postmaster-General by the provisions of the three hundred and first and three hundred and second sections of the act of June 8, 1872, chap. 335, or by the provisions of any other section of that act, to order the detention of mail matter after it has reached its destination and been distributed by the postmaster ready for delivery, though there may be a well-grounded suspicion that it is or has been attempted to be circulated in violation of law. *Opinion of Nov.* 29, 1872, 14 Op. 143.

XI. Mail Depredations.—Special Agents.

169. The appropriation of $35,000 for defraying expenses on account of mail depredations and for special agents, contained in the act of the 3d of March, 1851, chap. 21, is for the fiscal year commencing on the 1st of July, 1851, and ending on the 30th of June, 1852. *Opinion of April* 18, 1851, 5 Op. 355.

170. And as that amount is all that was appropriated for mail depredations and special agents, the Postmaster-General is not authorized to apply the whole of it to the payment of special agents, to the exclusion of such expenses as may be incidental to mail depredations, but he should apportion and apply it to both objects, according to his judgment and discretion. *Ibid.*

171. It is the duty of the Postmaster-General to return money which has been regained from mail robbers to the owner, when there is evidence, direct or circumstantial, which establishes the true ownership to a reasonable certainty. *Opinion of June* 1, 1852, 5 Op. 557.

172. It is the duty of the Post-Office Department to take into its possession all money known to be stolen from the mail, and restore it to the rightful owner. *Opinion of Aug.* 20, 1857, 9 Op. 70.

173. When the officer who arrests the thief takes the stolen money from him, he has no right to hold it against the demand of the Post-Office Department on the pretense that it is not absolutely and positively identified by the parties who claim to be its rightful owners. *Ibid.*

174. Where the fact of the theft is established, and the circumstantial evidence makes it reasonably clear that the money found upon the thief was the money stolen from the mail, the officer cannot legally detain it. *Ibid.*

175. Where the duties of "special agents" employed by the Postmaster-General, under section 4017 Revised Statutes, concern the railway postal service, such agents may, so far (and so far only) as regards the performance of those duties, be placed under the supervision of one or both of the officers authorized to be appointed by the Postmaster-General by section 4020 Revised Statutes, to superintend the railway postal service. *Opinion of Oct.* 9, 1876, 15 Op. 171.

POSTMASTER-GENERAL.

See also POSTAL SERVICE.

1. Although Postmasters-General have no authority to bind their successors in matters of purely public concernment, the case is different in respect to transactions with individuals. *Opinion of Oct.* 10, 1835, 3 Op. 2.

2. The Postmaster-General has no power to allow foreign steam packets to carry letters coastwise, even though he judge it expedient for them to do so. *Opinion of March* 11, 1842, 4 Op. 3.

3. He has power to establish a post-office in

the Cherokee country, provided it be upon a road constructed under the act of March 3, 1825, chap. 64, to establish a line of posts within it. *Opinion of May* 16, 1842, 4 Op. 29.

4. Where, by a private act, the Postmaster-General is required to cause to be re-examined the transportation account of a mail contractor, it is to be intended that the same shall be done in the statute routine of the accounting of the department. *Opinion of Aug.* 25, 1855, 7 Op. 439.

5. The Postmaster-General may lawfully contract, for any convenient time, with printers out of the city of Washington to execute such printing for the Post-Office Department as may be required for use out of Washington. *Opinion of April* 17, 1856, 7 Op. 680.

6. The Postmaster-General has no authority, under section 398 Revised Statutes, to negotiate a postal convention providing for the payment of indemnity for the loss of registered articles or letters. To enable him to do so further legislation is required. *Opinion of March* 12, 1878, 15 Op. 462.

7. The Postmaster-General has authority, under section 2 of the act of July 24, 1866, chap. 230, to fix the rates at which telegraphic communications between the several Departments of the Government and their officers and agents shall be carried over the line controlled by the Atlantic and Pacific Telegraph Company. *Opinion of May* 27, 1879, 16 Op. 353.

POST-OFFICE DEPARTMENT.

See EXECUTIVE DEPARTMENTS; POSTMASTER-GENERAL.

POST-TRADER.

See also SUTLER.

1. A post-trader appointed for a military post under section 3 of the act of July 24, 1876, chap. 226, is removable at the pleasure of the Secretary of War. *Opinion of May* 19, 1877, 15 Op. 278.

2. Such trader is simply a person licensed by the Secretary of War, with the concurrence of the council of administration and commanding officer, to carry on a certain traffic at a military post; and his removal would consist merely in a revocation of the license by the Secretary, in which the concurrence of the council of administration and commanding officer of the post is not required. *Ibid.*

3. A post-trader, located upon a Government reservation at a military post, within the boundaries of a Territory, cannot, because of the location of his business, claim exemption from the payment of a license tax imposed by the Territorial authorities, where his business extends to other than military persons. But where his business is confined to persons in the military service, it is not competent to the Territorial authorities to subject him to the payment of such tax. *Opinion of Feb.* 2, 1880, 16 Op. 657.

4. Post-traders at military posts, appointed under section 3 of the act of July 24, 1876, chap. 226, are by that section made subject to the regulations of the Army applicable to the occupation or business carried on by them, in like manner, and to the same extent, that sutlers formerly were with respect to the same business or occupation. *Held*, accordingly, that a tax of five cents for each soldier at the post, imposed by the council of administration upon the post-trader at Fort Dodge, Kansas, is in accordance with law. *Opinion of Feb.* 2, 1880, 16 Op. 658.

POWER OF ATTORNEY.

See also POWERS AND TRUSTS.

1. A power of attorney given to a cashier of a bank by name, or to his successors in office, authorizes the successors to act under it. *Opinion of March* 13, 1820, 5 Op. 723.

2. The power of attorney authorizing Jose Paul Bryan to receive certain moneys from the United States for professional services rendered in prosecuting the claim of the Creeks is sufficient for its purpose, if it appear that it was executed by those chiefs and headmen who had authority to execute such an instrument. *Opinion of March* 21, 1849, 5 Op. 76.

3. When a letter of attorney forms part of a contract, and is to secure the repayment of money lent, or has other valuable consideration, even if not made irrevocable in terms, it is to be deemed so in law. *Opinion of Nov.* 13, 1854, 7 Op. 35.

4. During a professional visit of Madame Sontag Rossi to the United States she invested the sum of twenty-five thousand dollars in stocks of the United States in her own personal name, and after her decease administration upon this property, as legal assets in the State of New York, was granted by the surrogate of the county of New York to "George Christ, of the city of New York, the attorney in fact of Charles Count Rossi, husband of Henrietta Rossi, deceased, late of Vienna, Austria"; the power of attorney referred to having been executed by Count Rossi after the death of Madame Sontag Rossi, and giving to Mr. Christ authority "to collect and receive any and all money due to me in any way, and to sell any stocks standing in my name on the books of any company in the United States, and the dividends on the same to receive": *Held* that this power of attorney does not, by the laws of the State of New York, apply to the stocks in question, which stocks, having been invested in the name of the wife, and not having been reduced to possession by her husband during her lifetime, are not of necessity money or effects due or growing due to Count Rossi. *Opinion of March* 28, 1855, 7 Op. 68.

5. The power of attorney of Francis Iturbe to P. A. Hargous is sufficiently authenticated. *Opinion of Dec.* 14, 1857, 9 Op. 130.

6. A warrant of attorney to draw money from the Treasury upon a claim not transferred or assigned, is within the first section of the act of February 26, 1853, chap. 81, and must be executed subsequent to the date of the warrant for the payment of the claim. *Opinion of Aug.* 17, 1858, 9 Op. 188.

7. Warrants of attorney executed before the date of that act are exempt from its provisions. *Ibid.*

8. S., having a contract with the Engineer Department for dredging in the Occoquan River, by the terms of which the compensation named therein was to be paid to him from time to time, gave to I. a power of attorney (declared in the instrument to be irrevocable), "to demand, receive, and receipt for, to the proper disbursing officer of the United States, all moneys, warrants, drafts, vouchers, and checks that may become due and payable to me (S.)' from the United States for work," &c. Subsequently S. notified the engineer officer in charge that he revoked the power of attorney: *Held* that by force of section 3477 Rev. Stat. said power of attorney was without legal effect with respect to the claim of the contractor against the United States for his compensation; that he might at any time revoke it, and when revoked it is not for the officers of the United States to consider whether the revocation was rightful or wrongful. *Opinion of Feb.* 7, 1879, 16 Op. 261.

9. The provision in that section making void "all powers of attorney, orders, or other authorities for receiving payment" of any claim upon the United States, or any part or share thereof, is not limited to powers of attorney, &c., relating to claims which are to be paid by Treasury warrant, but extends to those which relate to claims otherwise payable. *Ibid.*

POWERS AND TRUSTS.

See also POWER OF ATTORNEY.

1. A mere naked power does not survive; but a power coupled with an interest or a trust does. *Opinion of Nov.* 19, 1830, 2 Op. 397.

2. P. and R., survivors of F., who by act of Congress were constituted trustees for B. and M., are entitled to receive and distribute the fund appropriated by the act of May 26, 1830, chap. 115. *Ibid.*

3. A power to sell, without further explanation, ordinarily implies a sale without credit, unless there is an established usage applicable to the subject matter to the contrary. *Opinion of Oct.* 4, 1866, 12 Op. 57.

4. The rule against a sale on credit is stronger, if the power to sell is at a fixed price. *Ibid.*

PRE-EMPTION.

See PUBLIC LANDS, III.

PRESENTS.

1. The expense of recasting cannon, &c., to be presented to the Imaum of Muscat, in return for presents received, may be defrayed from the appropropriation for the contingent expenses of foreign intercourse. *Opinion of April* 11, 1845, 4 Op. 358.

2. And as it has been the practice of our Government, from its earliest history, to interchange presents with the semi-barbarous nations of Asia and Africa, and as the Executive is vested with a discretion respecting the manner in which friendly relations with them can be best maintained, it follows that if he shall be of opinion that the public interests will be promoted by tendering a present in return for one received he may legally do so, and cause the expense thereof to be defrayed from funds thus placed at his disposal. *Ibid.*

PRESIDENT.

1. A vessel under arrest, to prevent her from cruising against belligerent powers, may be discharged on the order of the President, communicated to the marshal having her in custody. But the expenses of arrest should be paid by the owner, and be made a condition of the discharge. *Opinion of July* 5, 1794, 1 Op. 48.

2. If the commandant of the island of Amelia were arrested in Georgia at the suit of an individual, the United States have no power to interfere; if, however, the suit be a public prosecution in the name of the State of Georgia, or of the United States, it will be proper for the Executive to interfere. *Opinion of Jan.* 26, 1797, 1 Op. 68.

3. The President has no constitutional power to interpose to prevent the arrest of a French consul-general. *Opinion of Nov.* 21, 1797, 1 Op. 77.

4. He may employ military force to remove from the *batture* or alluvial lands in New Orleans persons who have taken possession of them since the act of 3d March, 1807, chap. 46. *Opinion of Oct.* 24, 1807, 1 Op. 164.

5. The relinquishment of duties to be exacted under the customs laws is not within the remitting power confided to the President. *Opinion of April* 16, 1814, 1 Op. 176.

5. The President has no power to direct a person, under prosecution for an offense against the United States, to be bailed, or to be discharged without bail, on his own bond; the question of bail being a judicial, not an executive one. *Opinion of June* 23, 1818, 1 Op. 213.

6. He will issue death warrants in order to give effect to the laws, in cases where they are necessary by the practice of the State in which the sentence is passed. *Opinion of Aug.* 19, 1818, 1 Op. 228.

7. He has no authority to cause an arrest to be made except upon probable cause, supported by oath or affirmation. *Opinion of Sept.* 8, 1818, 1 Op. 229.

8. The President may issue his proclamation against an offender who has once been regularly arrested and made his escape; for, in such case, the regularity of the arrest implies that the probable cause has been furnished on oath, according to the Constitution. (Amend. art. 4.) *Ibid.*

9. Under the act of March 3, 1817, chap. 114, the power of the President to discharge public debtors from imprisonment is expressly limited to cases in which the person is imprisoned upon execution; the judgment which shall have been obtained is to remain good and sufficient in law, and may be satisfied out of any estate which may then, or at any time afterwards, belong to the debtor. The act is not applicable to the case of a debtor against whom there has been yet no judgment, and who is imprisoned, not upon execution, but upon *mesne process*. *Opinion of Sept.* 8, 1818, 1 Op. 231.

10. Where, in his opinion, a court-martial erred on the first trial in excluding proper testimony, the President can order a new trial. *Opinion of Sept.* 14, 1818, 1 Op. 233.

11. The general power given to the President to lease the saline on the Wabash, carries with it all the incidental powers necessary to a settlement with the lessees to transfer the kettles to a subsequent lessee, or to a former one, for a debt growing out of a lease of the works. *Opinion of April* 22, 1820, 1 Op. 352.

12. The President ought not to interfere with the judiciary whilst it is in the regular course of giving construction to acts of Congress, by directing a *nolle prosequi* of a proceeding against a British vessel for a breach of the navigation act of 18th April, 1818, chap. 70, after the district court has condemned her to forfeiture. *Opinion of May* 15, 1820, 1 Op. 366.

13. The orders issued by the Secretaries of War and of the Navy are, in contemplation of law, the orders of the President of the United States. *Opinion of July* 6, 1820, 1 Op. 380.

14. As commander-in-chief of the Navy and Army, the President can modify, suspend, or

scind an order issued to the Marine Corps. *id.*

15. He will not interfere in a matter of private and individual litigation. *Opinion of Nov.* , 1820, 1 Op. 405.

16. The President has power to order a *nolle prosequi* in any stage of a criminal proceeding the name of the United States. *Opinion of n.* 30, 1821, 5 Op. 729.

17. The President advised not to remove the arshal of Ohio on the *ex parte* statements of e complainants, but to inclose the papers to e district attorney of Ohio, with instructions proceed or not, as the evidence shall direct m. *Opinion of Feb.* 23, 1821, 5 Op. 732.

18. Except to avert extreme injustice, which nnot be otherwise avoided, the Executive ould not interfere in a civil suit between two izens. *Opinion of Nov.* 5, 1821, 5 Op. 742.

19. In the case of Captain Bell, who is under rest at the suit of Fairbanks, in Florida, the bject may be referred to Governor Jackson, his representative, to ascertain the extent of e Executive power under the laws as they ist in the premises, and to exercise the power, report to the President for further consideration. *Ibid.*

20. Where it is claimed by a foreign minister at a seizure made by an American vessel was violation of the sovereignty of his Government, and he satisfies the President of the fact, ie latter may, where there is a suit pending r the seizure, cause the Attorney-General to le a suggestion of the fact in the cause, in der that it may be disclosed to the court. *pinion of Nov.* 7, 1821, 1 Op. 504.

21. The power of the President over accounts only appellate in its nature, to be exercised ter the accounting officers shall have performed their duty in the matter. *Opinion of arch* 7, 1823, 1 Op. 597.

22. The report of a committee accompanying bill, which has passed into a law, may be referred to as well by the President whilst exercising his revising power as by the accounting fficers in their examination of the accounts ubmitted, for the principles to govern settlements under such law. *Ibid.*

23. The foreign intercourse fund being under he direction of the President, he may advance o a minister going from the United States to Chili such part of his salary as he shall deem necessary to the proper fulfillment of public engagements in respect to him. *Opinion of Oct.* 14, 1823, 1 Op. 620.

24. Although it is the duty of the President to take care that the laws be faithfully executed, he is not required to audit and allow public accounts, but to see that the officers assigned to that duty perform it faithfully. The auditors and comptrollers are assigned to that duty. They constitute the accounting department, and so long as they continue to discharge their duties faithfully the President has no authority to interfere. *Opinion of Oct.* 20, 1823, 1 Op. 624.

25. There is no law which renders the decision of the court of Georgia upon a claim of the marshal of that State for supporting negroes taken from a vessel brought in for adjudication, under the laws prohibiting the slave trade, binding on the Executive, so as to make it the duty of the executive department of the Government to pass an account which it considers unreasonable and unjust. *Opinion of Dec.* 30, 1823, 1 Op. 635.

26. The President cannot interpose in the settlement of accounts by the Comptroller, and require him to allow a credit to an individual in the settlement. *Opinion of Jan.* 13, 1824, 1 Op. 636.

27. The power of the President to order the discontinuance of a suit commenced in the name of the United States is a high and delicate one, to be exercised only with the greatest circumspection and care; and never in a case in which a court of the United States, free from suspicion of impurity, has taken cognizance of the matter, and thereby given countenance to the claim. *Opinion of July* 27, 1827, 2 Op. 53.

28. The case of the United States *vs.* the mayor and aldermen of New Orleans, commenced by petition for an injunction to restrain them from selling unoccupied land (the corporation claiming property), is not a proper case for the interference of the President. *Ibid.*

29. The controversy arising under the treaty of Indian Springs, between the people of Georgia and the Creek nation, having been adjusted by President Monroe, the award made by him must be regarded as final; the power of the President over the same is *functus officio.* *Opinion of July* 28, 1828, 2 Op. 110.

30. The President has no power to order

moneys paid into the treasury upon judgment and execution, upon the penalty of a bond, to be refunded several years after the payment was made. *Opinion of Jan.* 10, 1829, 2 Op. 189.

31. The general provisions of the twenty-seventh section of the judiciary act of September 24, 1789, chap. 20, confer no authority upon the President to appoint marshals in districts created subsequently to the passage of that law. *Opinion of Aug.* 27, 1829, 2 Op. 253.

32. The President cannot cause a quarantine to be established at Alexandria. *Opinion of Sept.* 5, 1829, 2 Op. 263.

33. The President has imposed on him the duty of fitting out and directing the employment of the public armed vessels; and where Congress fails to provide for disbursements indispensable to the performance of this branch of public duty, he may make such allowances to officers acting in higher stations than those to which they were appointed by their warrants or commissions. *Opinion of Oct.* 24, 1829, 2 Op. 284.

34. He cannot discharge a debtor to the United States imprisoned on a warrant of distress issued from the Treasury Department by the letter of the act of March 3, 1817, chap. 114; yet where the debtor will confess judgment, and will submit to a *capias* thereon at once, and to be thereby brought within the description of the act, the President may legally discharge him. *Opinion of Oct.* 26, 1829, 2 Op. 285.

35. The power of the President over a sentence of court-martial is a power over the whole of it, and he may approve, reject, or mitigate the same at pleasure. *Opinion of Nov.* 3, 1829, 2 Op. 287.

36. In exercising this revisory power over sentences, the President may consider the provocation, if any, which led to the offense, and all the facts and circumstances which properly bear upon the justice or injustice of the sentence. *Ibid.*

37. The President has no authority *per se*, except in the recess of the Senate, to appoint any permanent navy agents other than those enumerated and referred to in the act of 3d of March, 1809, chap. 28. *Opinion of March* 10, 1830, 2 Op. 320.

38. The appointment of a navy agent during the recess of the Senate, made in the case of a vacancy occurring during the recess, is in the exercise of the constitutional power of the President, and not by force of the act of 3d of March, 1809, chap. 28. *Opinion of April* 2, 1830, 2 Op. 333.

39. The President has determined to leave the execution of sentences of the law in all cases to the direction of the courts, in full confidence that they will give a reasonable time for the exercise of executive clemency in cases where it ought to be interposed. *Opinion of June* 4, 1830, 2 Op. 344.

40. The President having, as commander-in-chief, satisfied himself that an exchange of artillery and marine corps is consistent with the good of the service, and that the officers to be transferred have respectively assented to it, will then take care not to prejudice the rank of any officer of the regiment to which the transfer is made, by nominating the officers transferred to take the same rank in that regiment which was held by the officers whom he substitutes. *Opinion of June* 28, 1830, 2 Op. 355.

41. The President cannot order the delivery of diamonds and precious stones of the Princess of Orange, referred to in the note of Chevalier Huygens. *Opinion of Aug.* 4, 1831, 2 Op. 452.

42. Nor will he be justified in directing the surrender of the person upon whom a part of the stolen articles may have been found, as there is no stipulation between the two governments for the mutual delivery of fugitives from justice. *Ibid.*

43. Where an account has been settled, and a suit commenced on the balance found due, the President cannot enter into the correctness of the account for the purpose of repairing any errors which the accounting officers may have committed. *Opinion of April* 5, 1832, 2 Op. 508.

44. He cannot order the sale of a square of land in the city of New Orleans. The act of April 24, 1820, chap. 51, refers to lands of a different description. *Opinion of Sept.* 19, 1833, 2 Op. 586.

45. Payment of the claims of the citizens of Georgia under the Creek treaty of 1821, and the act concerning them of June 30, 1834, chap. 145, may be made by the President to the State of Georgia for the use of the claimants. *Opinion of Dec.* 20, 1834, 2 Op. 691.

46. He has power to expel intruders from the lands secured to the Chickasaws east of

ıissippi by military force, though such ve been leased by them. *Opinion of* 837, 3 Op. 255.

ıe President does not possess the power any portion of a specific appropriation mileage and pay of members of the f Representatives to be transferred to ingent fund of that body. *Opinion of* 1839, 3 Op. 442.

ı cannot lawfully interpose an opinion ıg a claim until the accounting officers ve passed upon and settled all the the account. *Opinion of March* 16, Op. 500.

e has no authority to cause buildings ected for the reception of transported . *Opinion of Dec.* 24, 1842, 4 Op. 139.

or to remit the forfeiture of a bail *Opinion of Feb.* 20, 1843, 4 Op. 144.

ır has he power to prevent the exhi- f Indians. *Opinion of Feb.* 21, 1843, 4.

e is required to see that the laws are y executed, but is not obliged to exe- m himself. *Opinion of Aug.* 4, 1846, 5.

ıe law has designated the officer to pon applications for pensions, and has for no appeal to the President; e he will not undertake to revise ions of the Commissioner. *Ibid.*

e President is not authorized to direct ı of an appropriation for the Winne- lians to be transferred to meet ex- ı the Department of the Interior for ıe appropriation is inadequate or for ıne had been made. *Opinion of April* 5 Op. 90.

here several midshipmen had been dis- by the sentence of a naval court- which was approved by President who afterwards reconsidered his ap- nd announced his determination to hem, but failed to do so before his is within the competency and power resent Executive to restore them to mer rank in the Navy, provided it lone without increasing that class of eyond the number limited by law. *of Sept.* 19, 1850, 5 Op. 259.

ıe President is under no official obli- interfere with the disputed question legal effect of a decision of a former Secretary of the Treasury concerning the extent of the grant of land on the Des Moines river to Iowa. *Opinion of Dec.* 2, 1850, 5 Op. 275.

57. Nor to interfere with the subject-matter of the memorial of Fellows & Co., who have invoked the aid of the Executive to compel the Secretary of War to file the report of the arbitrators between the Seneca Indians and themselves. *Ibid.*

58. Although it is the duty of the President to take care that the laws are faithfully executed, it is not, in general, judicious for him to interfere with the functions of subordinate officers further than to remove them for any neglect or abuse of their official trust. *Opinion of Jan.* 17, 1851, 5 Op. 287.

59. He has no proper authority to employ counsel, at the expense of the Government, to advise, protect, and defend the marshal of the southern district of New York in cases arising under the fugitive slave law. *Ibid.*

60. He is invested with authority to remove the chief justice of the Territory of Minnesota from office; and it is his duty to do so if it appear that he is incompetent and unfit for the place. *Opinion of Jan.* 23, 1851, 5 Op. 288.

61. That the President has the constitutional power to remove civil officers appointed and commissioned by him, by and with the advice and consent of the Senate, where the Constitution has not otherwise provided by fixing the tenure during good behavior, has long been settled beyond controversy or doubt. *Ibid.*

62. The power is reposed in the President in order that he may enforce the execution of the laws through the agency of competent and faithful subordinate officers. *Ibid.*

63. The President of the United States has no jurisdiction to entertain appeals in matters of account, either on the application of the Commissioner of Customs, or of the Comptrollers, or of the Auditors, or of the individual claimants; he is "to take care that the laws be faithfully executed," not by his own personal examination of accounts, but by the agents and means provided for him by the Constitution and the laws. *Opinion of Nov.* 13, 1852, 5 Op. 630.

64. The President and subordinate executive officers, whether military or civil, possess

a limited power to establish regulations, provided these be in execution of and supplemental to the statutes and statute regulations; but not to repeal or contradict existing statutes or statute regulations, nor to make provisions of a legislative nature. Hence the "System of Orders and Instructions" for the Navy, issued by President Fillmore as "Executive of the United States," February 15, 1853, is without legal validity, and in derogation of the powers of Congress. *Opinion of April* 5, 1853, 6 Op. 11.

65. The President of the United States has the constitutional power to pardon as well before trial and conviction as afterwards; but it is a power only to be exercised with reserve and for exceptional considerations. *Opinion of April* 15, 1853, 6 Op. 20.

66. It is in the discretion of the President whether or not to require bonds of an officer of the Engineer Corps employed as disbursing agent of the Government. *Opinion of April* 20, 1853, 6 Op. 24.

67. In general, where the Constitution or an act of Congress requires the President to do a thing which requires the expenditure of money, he may lawfully do it, or contract to have it done, in the absence of any adequate appropriation for the object, and the cost of the thing becomes a lawful charge on the Government. *Opinion of May* 6, 1853, 6Op. 27.

68. Where, by the special provision for a particular work commenced and in progress, it was provided that nothing in the act should be so construed as to authorize any officer of the Government to bind the United States by contract beyond the amount of existing appropriation: *Held* that if the public interest required the President to make a contract for the work exceeding such amount he might lawfully do so, subject to the chance of future appropriations for the object, without which the contract would not bind the United States. *Ibid.*

69. A special provision of law enacted that "all contracts now existing" in relation to a given object, "not made according to law, are hereby canceled": *Held* that, under this law, the President is to judge whether such contracts were made "not according to law," and that the law does not determine this point. And *quære* whether it could be determined by act of Congress. *Ibid.*

70. When an officer of the Army or Navy is sued on account of acts alleged to have been performed in the line of his duty, the Executive is to judge, in his discretion, whether the case is one of which the defense is to be assumed by the Government. *Opinion of July* 27, 1853, 6 Op. 75.

71. The unlimited discretion of the President as to the quantity of land to be reserved for public purposes, conferred by the fourteenth section of the act of September, 27, 1850, chap. 76, has been taken away by the ninth section of the act of February 14, 1853, chap. 69, which provides "that all reservations heretofore as well as hereafter made, &c., shall, for magazines, arsenals, dock-yards, and other needful public uses, except for forts, be limited to an amount not exceeding twenty acres for each and every of said objects at any one point or place, and for forts to an amount not exceeding six hundred and forty acres at any one point or place." *Opinion of Oct.* 15, 1853, 6 Op. 157.

72. A legislative act of the British colony of New South Wales, enacting that certain proceedings may be had in the court as to deserting seamen of any foreign country in that colony, provided its government assents: *Held* that the President cannot give such assent on the part of the United States, but that it can only be done by treaty or act of Congress. *Opinion of Oct.* 28, 1853, 6 Op. 209.

73. In general, it is not the duty of the United States to assume the legal defense by counsel of marshals and other ministerial officers of the law, where these are sued for official acts. But the President of the United States, in the discharge of his constitutional duty to take care that the laws be faithfully executed, may, in his discretion, well assume, in certain cases, the defense of such ministerial officers. *Opinion of Nov.* 14, 1853, 6 Op. 220.

74. The right to do this cannot be limited to cases in which the *property* of the United States is concerned, but extends to other cases, more especially those affecting the constitutional security of the Government, whether in the relation of the United States to foreign governments, or that of the States among themselves, or that of the States to the United States. *Ibid.*

75. When combinations exist among the citizens of one of the States to obstruct or defeat the execution of acts of Congress, and the

question of the constitutionality of such laws is made in suits against a marshal of the United States, the President is justified in assuming his defense on behalf of the United States. Hence, a marshal being harassed with suits on account of his official action in the extradition of a fugitive from service, his defense may well be undertaken by the United States. *Ibid.*

76. The President has no power to afford pecuniary redress to a party who alleges abuse of power against him by the attorney of the United States for one of the Territories. *Opinion of March* 23, 1854, 6 Op. 392.

77. An act within the jurisdiction of the President of the United States, lawfully done by him, cannot be revised by one of his successors. *Opinion of June* 30, 1854, 6 Op. 603.

78. Whether the President can lawfully discharge a prisoner confined for non-payment of a penalty accruing as indemnification to the individual injured by the prisoner's act, *dubitatur*. *Opinion of July* 19, 1854, 6 Op. 615.

79. A provision of an act of Congress (section 27 of the act of March 3, 1855, chap. 175), as it stands on the rolls, enacts that a certain sum of money be paid to R. W. T., according to contract between him and the Menomonee Indians; but, in fact, as the act passed to be enacted it contained the following proviso, namely: "Provided that the same be paid with the consent of the Menomonees": *Held* that, in his discretion, the President may abstain from proceeding to act under the general enactment, unless with consent of the Menomonees, and submit the matter to Congress. *Opinion of May* 21, 1855, 7 Op. 166.

80. As a general rule, the direction of the President is to be presumed in all instructions and orders issuing from the competent Department. *Opinion of Aug.* 31, 1855, 7 Op. 453.

81. Official instructions issued by the heads of the several Executive Departments, civil and military, within their respective jurisdictions, are valid and lawful, without containing express reference to the direction of the President. *Ibid.*

82. The President of the United States has lawful authority summarily to remove intruders from lands duly held by the Government for the site of a light-house or for any other competent purpose. *Opinion of Sept.* 21, 1855, 7 Op. 534.

83. In the early period of the Government, there was irregularity in the practice regarding capital sentences under acts of Congress, that is, upon the point whether the convict should be executed on a warrant of the court by which he was tried, or of the President. *Opinion of Oct.* 19, 1855, 7 Op. 561.

84. But, in the administration of President Jackson, it was determined, and made known by circular from the office of the Attorney-General, in all cases to leave the execution of the sentence of the law to the discretion of the court, in confidence that the court will give a reasonable time for the interposition of Executive clemency in cases where it ought to be interposed. *Ibid.*

85. The President of the United States alone has the power to pardon offenses committed in a Territory in violation of acts of Congress. *Ibid.*

86. He cannot restore a convict to the rights of citizenship any further than the operation of a general pardon. *Opinion of July* 9, 1856, 7 Op. 760.

87. The President has no power to make advances to the governor of Kansas otherwise than by draft on funds appropriated by law for some branch of public service in the Territory. *Opinion of Oct.* 27, 1856, 8 Op. 137.

88. The President may appoint a private secretary at a salary of $2,500; a secretary to sign patents at a salary of $1,500; and designate a clerk in the Land Office to assist the latter officer. *Opinion of April* 14, 1857, 9 Op. 17.

89. An official act done by the head of a Department is the act of the President, and no appeal lies from the former to the latter. *Opinion of July* 31, 1860, 9 Op. 463.

90. As commander-in-chief it is the right of the President to decide, according to his own judgment, what officer shall perform any particular duty, and as supreme executive magistrate he has power of appointment. *Ibid.*

91. If Congress should attempt, by a provision in a statute, to make a military officer independent of the President, he might execute the law in disregard of such unconstitutional provision. *Ibid.*

92. The President can use his power only in the manner prescribed by Congress. *Opinion of Nov.* 20, 1860, 9 Op. 517.

93. Where the law directs a thing to be done without prescribing the means, the Presi-

dent may use such means as may be necessary and proper to accomplish the end of the legislature; but where the mode of performing a duty is pointed out by statute, that is the exclusive mode. *Ibid.*

94. The President has the right to take such measures as may be necessary to protect the public property, as well as to retake public property in which the Government has been carrying on its business, and from which its officers have been unlawfully expelled. *Ibid.*

95. By the acts of February 28, 1795, chap. 36, and March 3, 1807, chap. 39, the President may employ the militia and the land and naval forces for the purpose of causing the laws to be duly executed; but when a military force is called into the field for that purpose, its operations must be purely defensive, and the military power on such an occasion must be kept in strict subordination to the civil authority. *Ibid.*

96. Where an act of Congress, establishing a general system, confers on the President the authority to do a specific act for the purpose of perfecting the means by which that system shall be carried into effect, the act of the President, when performed according to the terms of the statute, has all the validity and authority of the statute itself. *Opinion of March* 19, 1862, 10 Op. 469.

97. The President has no authority to perform personally the duties appropriate to the office of an auditor or comptroller of the Treasury, but it is his duty, and he has authority, to see that each performs the duties required of him by law. *Opinion of Oct.* 8, 1864, 11 Op. 109.

98. There is no statute under which the President may forgive, discharge, or reduce generally debts due to the United States. *Opinion of Nov.* 21, 1864, 11 Op. 124.

99. The President has no authority under the eleventh section of the act of August 31, 1852, chap. 108, to allow the payment of an account of a United States marshal for extraordinary expenses, without a special previous taxation of the proper district or circuit court. *Opinion of July* 7, 1866, 11 Op. 522.

100. Where an officer of the Army has been reported to, and found unfit for the proper discharge of his duties by, the board of officers constituted under the provisions of the eleventh section of the act of July 15, 1870, chap. 294, and, after having been allowed a hearing before the board, is recommended by the board to be mustered out of the service, it is the duty of the President to carry such recommendation into effect. *Opinion of Dec.* 14, 1870, 13 Op. 353.

101. The fund appropriated by the act of March 3, 1871, chap. 114, for the expenses of the commission to settle claims of citizens of the United States against Spain, may be paid to the commissioners and advocate on the part of the United States, from time to time, at the discretion of the President. *Opinion of April* 29, 1871, 13 Op. 416.

102. The act establishing the Department of Justice does not prohibit the designation by the President of an advocate on the part of the United States. *Ibid.*

103. The Executive has no authority to restore to the former owner certain lands in South Carolina which the United States hold under a title acquired by purchase of the premises at a tax sale under the provisions of the direct-tax law. (See NOTE, 13 Op. 507.) *Opinion of Aug.* 15, 1871, 13 Op. 506.

104. It is competent to the President, on the presentation for his approval (under section 9 of the act of July 1, 1862, chap. 120) of a map of the route of the contemplated extension of the Central Branch Union Pacific Railroad west of the meridian of Fort Riley, to make a provisional approval of the route solely for the purpose of withdrawing the lands from private entry along the same, without prejudice to his right of ultimately disapproving it; such a course would not at all commit him in regard to his final action upon the matter. *Opinion of March* 17, 1873, 14 Op. 607.

105. In the exercise of his general administrative superintendence, the President may interfere to restrain an officer from assuming an authority that does not belong to him, as well as to compel the officer to perform a duty that does belong to him. *Opinion of May* 15, 1876, 15 Op. 94.

106. Hence it is competent to the President to entertain an appeal from the head of a Department which concerns the authority of a subordinate officer in the Department. *Ibid.*

107. The President has power to authorize the commissioner, appointed under the joint

solution of February 16, 1875, to represent ıe Government at the International Penitenary Congress to be held at Stockholm. *Opinn of March* 31, 1877, 15 Op. 618.

PRESIDENTIAL MANSION.

1. The original reservation in the plat of the ty of Washington for the President's manon extended south to the bank of the stream lled Goose Creek. *Opinion of May* 4, 1854, Op. 444.

2. There is no public street lawfully existg across the reservation south of the Presint's mansion. *Ibid.*

PRINTING.

See also CONGRESSIONAL PRINTER.

1. The person entitled to the printing of the reasury Department, generally, under the te biddings, should execute all the printing quired by it, whether on paper or parchment, twithstanding the error of the clerk in erneously stating to the bidder for parchment at his bid for the printing of it was accepted. *inion of July* 17, 1839, 3 Op. 469.

2. The requisitions of the Superintendent of ıblic Printing are to be made by him directly ı the Secretary of the Treasury, and do not quire to be approved by the Secretary of the terior. *Opinion of Dec.* 14, 1853, 6 Op. 228.

3. The Postmaster-General may lawfully ntract, for any convenient time, with printers ıt of the City of Washington, to execute such inting for the Post-Office Department as may ı required for use out of Washington. *Opinn of April* 17, 1856, 7 Op. 680.

4. The certificate of the Superintendent of ıblic Printing, given to a person who is not e Public Printer, is not conclusive on the counting officers of the Treasury. They may quire into the accuracy of the facts stated. *inion of March* 1, 1861, 10 Op. 5.

5. The certificate of the Superintendent is solutely necessary to authorize payment of ıe Public Printer, and if he wrongfully withlds it he renders himself liable to an action y the party injured. *Ibid.*

6. The proviso to the third section of the joint resolution of June 23, 1860, in effect restrains the Superintendent of Public Printing from paying higher prices for work by the day or week than is paid in the private establishments of Washington for work by the day or week, and from paying higher prices for piecework than they pay for work of that kind. *Opinion of Feb.* 18, 1862, 10 Op. 187.

7. Nothing in that proviso prohibits the Superintendent from fixing such number of hours for labor in the office as he thinks proper. *Ibid.*

8. Section 10 (third *proviso*) of the act of March 2, 1867, chap. 167, does not require "printing" ordered by Executive Departments to be performed at such newspaper offices only as are designated by the Clerk of the House of Representatives under section 7 of the same act. *Opinion of July* 24, 1873, 14 Op. 616.

PRIORITY.

1. Where the estate of any deceased debtor in the hands of executors or administrators shall be insufficient to pay all the debts due from the deceased, the debt due the United States shall be first satisfied; but whether the United States have priority over mortgages executed on land of the debtor, whilst a debtor to the United States, *quære.* (See act March 3, 1797, chap. 20.) *Opinion of Dec.* 8, 1820, 1 Op. 414.

2. A prior lien on a policy for the premium of an insurance is overreached by the right of preference of the United States, even though the preference be founded on a subsequent act of insolvency. *Opinion of June* 2, 1823, 1 Op. 616.

3. Where one of two partners had given bonds with sureties to the United States for duties on merchandise imported by the firm upon which there was subsequently found to be due the sum of $30,000, and deeds of trust to a third person were afterwards executed, conveying, among other property and claims, a certain debt due the firm from the Government of Naples on account of the seizure of a schooner and cargo in which they had an interest, which, under the convention of the King of the two Sicilies, had been awarded to them, and now claimed and demanded by the trustees under the deeds of trust, they alleging that the debt of the United States for duties

had been extinguished by the taking of the bond of one partner with sureties: *Held*, that, notwithstanding the decision of Judge Washington in the case of the United States *vs.* Astley & Brooks, the debt remains against the firm, and must be first deducted from the amount awarded to them before payment can be made to them or their assignees. *Opinion of June* 22, 1835, 2 Op. 719.

4. Where a receiver of public moneys at Kalamazoo received in payment for public lands the notes of a specie-paying bank that afterwards suspended specie payments, and then took from the bank a draft on another bank which was returned dishonored, and a receiver of assets having been appointed under the laws of Michigan, with whom the receiver of public moneys filed a claim for this debt: *Held* that, notwithstanding the acts of the latter, the legal priority of the United States to payment still exists. *Opinion of March* 3, 1841, 3 Op. 625.

PRISONERS OF WAR.

Union soldiers, made prisoners by the enemy and discharged under parole, but not exchanged, cannot, under the terms of the cartel of July 22, 1862, agreed to between Major-General Dix and General Hill, be employed by the Government in suppressing an insurrectionary war of Indian tribes. *Opinion of Oct.* 18, 1862, 10 Op. 357.

PRIVILEGED COMMUNICATION.

1. Official correspondence between the Commissioner of Internal Revenue and a district attorney, in relation to cases of violation of the internal-revenue laws and to prosecutions thereunder, belong to that class of communications which, on grounds of public policy, are regarded as privileged, and the production of which in evidence, in a suit between private parties, the law will not enforce. *Opinion of Oct.* 12, 1877, 15 Op. 378.

2. A *subpœna duces tecum*, issued by a State court, was served upon a district attorney, requiring him to appear as a witness in a private suit and bring with him all letters and telegrams received from the Commissioner of Internal Revenue relative to certain causes then pending in a United States court on indictments under the internal-revenue laws: *Advised* that it would be proper for the attorney to appear before the State court in obedience to the writ, and there object to produce the papers on the ground that they are privileged, if, in his judgment or in that of the Commissioner, their production would be prejudicial to the public interests. *Ibid.*

3. An officer, under authority of the Treasury Department, advertised for proposals to furnish fuel. C., a bidder, addressed a communication to the officer relating to the responsibility of H., another bidder. The officer, in obedience to his instructions, submitted to the Department the bids received by him, and with them he forwarded the said communication. An action for libel having been brought by H. against C., and interrogatories therein concerning said communication filed in the Department: *Held* that the communication cannot properly be treated by the Secretary as a privileged one. *Opinion of Dec.* 17, 1877, 15 Op. 415.

4. In general, only such communications as are made in the course of their official duties by the persons making them come within the rule of privileged communications, and are confidential under all circumstances. But in certain cases (indicated in the opinion) communications other than those of officials may be treated as confidential, and in these cases the Department would be justified, upon public considerations, in declining to furnish copies of such communications on the order of a court. *Ibid.*

5. The defendants in a suit on a distiller's bond, instituted for the recovery of internal-revenue taxes assessed under section 3253 Rev. Stat., have no legal right to the use at the trial of the reports, documents, and other papers on file in the office of the Commissioner of Internal Revenue, upon which the Commissioner acted in making the inquiries and determinations contemplated by section 3182 Rev. Stat., and from which he derived the information that, in whole or in part, formed the basis of the assessment. Nor has the court authority to compel the production of such papers. *Opinion of May* 31, 1878, 16 Op. 24.

PRIZE.

also CAPTURE.

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d States. *Opinion of Sept.* 20,

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1816, 1 Op. 186.

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nder a decree of court. *Opin-*
20, 1 Op. 403.

of a capture made by indi-
vithout a commission, inure to the Government, but it has not been the practice to exact them. It has been their practice to recompense gratuitous enterprise, courage, and patriotism by assigning the captors a part and sometimes the whole of the prize. *Opinion of April* 24, 1821, 1 Op. 463.

9. The 4th section of the act of 3d March, 1800, chap. 14, refers to the prize law for the proportion of the salvage which the officers and crew shall take in a given case, as well as for the mode in which the share, so taken by them, shall be distributed. *Opinion of Feb.* 20, 1823, 1 Op. 594.

10. The rules for the distribution of prize-money are: that the whole of the prize belongs to the captors when the vessel captured is of equal or superior force to the vessel making the capture; and when of inferior force the prize is directed to be divided equally between the United States and the officers and men making the capture. *Ibid.*

11. As the act of 14th July, 1832, chap. 269, for the relief of Captain Stevens and others, does not expressly authorize the President to depart from the general regulations on the subject of prize-money, the act of April 23, 1800, chap. 33, for the better government of the Navy, must be taken as a guide in the execution of the law. *Opinion of July* 5, 1834, 2 Op. 656.

12. Where an American vessel had entered and cleared from a port under blockade, and, whilst returning to New Orleans, was captured by a vessel belonging to the French blockading squadron, from which the captain of the former rescued her and brought her into the port of New Orleans, to which he was destined; and demand subsequently being made on the Executive to deliver up the vessel and cargo, both on account of the said breach of blockade and the rescue: *Held* that the captors have no right of property in said vessel and cargo; and that the liability of the vessel to condemnation, if it ever existed, has ceased by the termination of her voyage at the port of her destination. *Opinion of Oct.* 11, 1838, 3 Op. 377.

13. Distribution of certain moneys appropriated by Congress as prize-money among the officers and crew of two gunboats must be made in the proportions and to the persons pointed out by the general laws and regulations of the Navy applicable to the subject. *Opinion of April* 13, 1839, 3 Op. 451.

14. The act abolishing the office of prize agent, and requiring all incumbents thereof to deposit all moneys in their hands in the Treasury of the United States, divested prize courts of all powers to distribute prize-moneys, and relieved the agents of all responsibility to comply with their orders directing distribution made subsequent to the passage of the law. *Opinion of July* 24, 1849, 5 Op. 142.

15. Where a prize agent refuses to deposit certain prize-moneys in the Treasury. in conformity with the act of 3d March, 1849, chap. 103, on pretense that the act is not applicable to the case, and the Attorney-General has decided that he ought to make the deposit, it is proper to institute proceedings in the prize court to compel a compliance with the law. *Opinion of Oct.* 7, 1850, 5 Op. 266.

16. It is the duty of prize agents to deposit all moneys in their hands in the Treasury of the United States. *Opinion of Oct.* 24, 1853, 6 Op. 197.

17. It is the settled practice of prize courts to award costs for or against claimants, at discretion. *Opinion of Sept.* 19, 1862, 10 Op. 347.

18. After a regular condemnation of a vessel and cargo in a prize court, for breach of blockade, the President cannot remit the forfeiture and restore the property or its proceeds to the claimant. *Opinion of Feb.* 9, 1863, 10 Op. 452.

19. After such condemnation the share apportioned to the captors becomes a vested right, and the part which belongs to the United States is vested by law in the Navy pension fund; and neither can be rightfully withdrawn from its legal destination by any Executive act under authority of the pardoning power. *Ibid.*

20. The 2d section of the prize act of March 3, 1863, chap. 86, authorizing the taking by the Government of any captured property and the deposit of its value in the Treasury, subject to the jurisdiction of the prize court in which proceedings may be instituted for condemnation of the property, is a valid exercise of the power of Congress to make rules concerning captures. *Opinion of Sept.* 14, 1863, 10 Op. 519.

21. The provision of that section is not in conflict with the public law of war, and does not impair the just rights of neutrals under that law. *Ibid.*

22. But if it were thus in conflict with the public law it would be none the less binding upon the courts of the United States, though such conflict might lead to diplomatic reclamations and possibly to war. *Ibid.*

23. The commander of a squadron is not entitled to share in prizes taken by a vessel or squadron after he has transferred the command to his successor, although the captures were made in pursuance of instructions issued by such commander before the transfer of his command. *Opinion of March* 4, 1864, 11 Op. 9.

24. The flag-officer of a squadron is not entitled to the share of prize-money accruing to the captain of his flag-ship from captures made by that ship while her captain was detached on account of illness, and the flag-officer was *de facto* in command of her. *Ibid.*

25. On a question as to the distribution of the proceeds of certain prize property captured by the United States steamer Santiago de Cuba, Captain Glisson, on the 29th and 30th of June and the 1st of July, 1864: *Held* that the capturing vessel was under the "immediate command" of Admiral Lee, as commander-in-chief of the North Atlantic blockading squadron, and that Admiral Lee was entitled, under the act of July 17, 1862, chap. 204, to one-twentieth part of the prize-money awarded to the vessel making the capture. *Opinion of Sept.* 27, 1864, 11 Op. 94.

26. The act of June 30, 1864, chap. 174, does not alter the rule of distribution of prize-money in cases of maritime captures pending at the date of the act, but the proceeds in those cases are distributable according to the law existing at the time of the captures. *Opinion of Sept.* 30, 1864, 11 Op. 102.

27. The law regulating the distribution of prize-money among naval captors is a conditional grant by Congress, and as soon as the conditions are fulfilled the grant becomes absolute. *Ibid.*

28. There is no power in the Executive to revise and reverse the judgments of the prize or other courts of law of the United States, or to criticise and condemn their supposed errors. *Opinion of Oct.* 20, 1864, 11 Op. 117.

29. When the courts have acquired jurisdiction of cases of maritime capture the political department of the Government should postpone the consideration of questions concerning

ı and indemnification until the ıas finally performed its functions ses. *Ibid.*

modore Wilkes having, without au- d in disobedience of the orders of epartment, usurped command of the ates steamer Vanderbilt, cannot share of the prizes captured by that *inion of Jan.* 19, 1865, 11 Op. 147.

mander Wyman cannot share in s while acting under orders of Com- lkes, on board of that vessel. *Ibid.*

e of commander of capturing vessel.

)fficer of a fleet absent with leave ommand to which he is attached, rpose of attending to his private ıot entitled to share in prizes cap- ıg his absence. *Opinion of Aug.* 24, p. 327.

r condemnation of a vessel libeled ɜ President cannot affect the decree g a discontinuance of the proceed- *ıion of April* 2, 1866, 11 Op. 445.

President cannot, by any exercise oning power, remit or mitigate the f property confiscable as prize of war.

facts of this case showing that Com- rman, at the time of the capture of steamer Gertrude by the United mer Vanderbilt, was "doing duty the latter vessel within the contem- ection 3 of the act of July 17, 1862, ınd was borne on the books thereof: he is entitled to participate in the the prize according to the rate of he service at that period. *Opinion* 872, 14 Op. 150.

rporal of a volunteer regiment was om his company for service in the pi Marine Brigade," and while in e participated in the capture of a eby he became entitled to share in of the proceeds thereof, after mak- ı deductions, in proportion to the pay. He alleges that, when the aken, he was acting as a first lieu- direction of the commander of the \ few days before that event, a com- s issued appointing him a first lieu- he brigade; but owing to causes be- ntrol he did not receive it, and had no knowledge of its existence until several months afterward. He claims a share of the proceeds of the prize as a first lieutenant, though he is entered only as a private upon the prize-list of the vessel on which he served. *Held* that if, as claimant alleges, he was performing the duties of first lieutenant at the period of the capture, then, inasmuch as in such case he would be entitled to the pay of that grade under the provisions of the joint resolution of July 11, 1870, amendatory of the joint resolution of July 26, 1866, he would be equally entitled to share in the prize in proportion to the rate of that pay. *Opinion of Feb.* 6, 1874, 14 Op. 365.

38. Where a district court, by its decree, ordered certain money to be distributed as proceeds of prize, one-half to the captors and the other half to the "Navy pension fund"; and at a subsequent term of the court, the distribution of the money having in the meantime been made as thus ordered, altered its decree by ordering all the money to be paid to the captors as military salvage: *Held* that, as to the money in question, viz: the amount distributed to the "Navy pension fund", the modified decree was of no effect and void; the funds having then already passed out of the jurisdiction and control of the court. (*Cf.* opinions of Attorney-General Akerman of August 1 and December 6, 1870, in 13 Op. 299, 348.) *Opinion of Feb.* 5, 1875, 14 Op. 524.

39. The words, "their respective rates of pay in the service," as used in section 10, paragraph numbered "fifth," of the prize law of June 30, 1864, chap. 174, signify the rates of pay actually established, and to which the parties concerned were entitled, at the time of the capture of the prize. *Opinion of Dec.* 10, 1875, 15 Op. 64.

40. Accordingly, the promotion of a naval officer to whom prize-money is distributable under said paragraph, conferred after the date of the capture of the prize, cannot affect the distribution of the fund, even though by the promotion he became entitled to increased pay from and including that date. In such case the rate of pay which the officer was in receipt of when the capture was made, not the increased pay resulting from the promotion afterwards bestowed, is the measure of his allowance under that provision. *Ibid.*

41. The commander of a single ship is by

the prize law aforesaid restricted to one-tenth or three-twentieths (as the case may be) of the prize-money awarded to his vessel, and cannot share according to his rank, where that would give him more. *Ibid.*

42. Under a decree, in prize, of the district court of the United States for the southern district of Illinois, passed at its June term, 1868, certain moneys were paid into the Treasury to the credit of the naval pension fund. At its November term, 1869, in a proceeding for the reformation of that decree, due notice of which was given to the proper representative of the United States in the cause, the court modified its decree so far as to require the said moneys to be distributed to the captors named therein: *Held* that the decree as thus modified is the only final decree of the court in the cause, and should alone be regarded as the decree of the court, for the purpose of distribution of the funds, within section 16 of the act of June 30, 1864, chap. 174 (section 4641 Revised Statutes), and that it is the duty of the Secretary of the Navy, and of all officers of the United States concerned, to give effect thereto. *Opinion of July* 27, 1876, 15 Op. 576.

43. Opinions of Attorney-General Akerman and Attorney-General Williams in same matter (13 Op. 299, 348; 14 Op. 524), considered, and the apparent conflict between the view there taken and that here adopted explained by a material difference between the state of facts as then and that as now presented. *Ibid.*

PROCESS.

See also STATE PROCESS.

1. The judicial power of a nation extends to every person and every thing in its territory, excepting only such foreigners as enjoy the right of exterritoriality, and who, consequently, are not looked upon as temporary subjects of the state. *Opinion of March* 11, 1799, 1 Op. 87.

2. The lawfulness of serving judicial process upon a person on board a foreign ship of war within the United States is undeniably acknowledged by necessary and unavoidable implication in the seventh section of the act of June 5, 1794, chap. 50. *Ibid.*

3. The executive officers are not subject to suit for acts done in the regular discharge of their official duties. *Opinion of April* 8, 1823, 5 Op. 759.

4. The Treasurer of the United States is not liable to the process of attachment for the salaries of clerks in the Departments. *Ibid.*

5. It may be doubted whether a circuit court has power to send criminal process beyond the limits of the district in which the court is held. *Opinion of Feb.* 9, 1859, 9 Op. 265.

6. The warrant of a judge of a circuit court of the United States will run throughout the United States. *Opinion of Dec.* 10, 1864, 11 Op. 127.

7. The Government of the United States should not interfere with process issued out of a State court in Kentucky for the arrest of "paroled rebel prisoners," charged with robbery on the occasion of "Morgan's raid." *Opinion of May* 27, 1865, 11 Op. 240.

PROMOTION.

See ARMY, II; NAVY, II.

PROPERTY OF UNITED STATES.

1. All collections of objects of natural history and the like, and all field-notes or other like local information, taken or obtained by any public officer, civil or military, *in the line of his duty*, belong to the Government. *Opinion of June* 26, 1854, 6 Op. 600.

2. But officers of the Government, civil or military, may lawfully make collections and take notes for their own use; provided the same be done without neglect of public duty or expense to the Government; and provided also, that it be done without violation of superior order in their respective departments. *Ibid.*

3. An injunction, or any other judicial process, is not necessary to prevent a railway company from taking possession of a fort or other military property of the Government. If such an invasion is threatened, the officer at the post ought to be instructed to resist it by force. *Opinion of Sept.* 29, 1857, 9 Op. 106.

4. An officer in command of a military post

ıe right to protect it by force from occu-
ı or injury at the hands of trespassers.
on of Sept. 24, 1860, 9 Op. 476.

An officer in command of such a post has
thority to lease the lands for private pur-
to persons who are not in the employment
Government. *Ibid.*

Property of the United States, transferred
ɔel authorities, in the hands of persons
n the jurisdiction of a friendly foreign
may be recovered by appropriate judicial
ɛdings instituted by the United States in
urts of the foreign government. *Opinion*
y 13, 1865, 11 Op. 292.

PROPOSALS.

CONTRACT, III; POSTAL SERVICE, II.

PUBLIC ARMS.

See also SALE OF ARMS.

e Secretary of War has no power to sell
State serviceable arms belonging to the
ɛd States. These and other munitions of
ıre held by him for the public purposes of
ɔovernment, without any authority to dis-
of them by sale. *Opinion of March* 27,
16 Op. 477.

PUBLIC BUILDINGS.

Public buildings are not legally in the
ssion of the head of Department, military
ıval commandant, or other public officer
uty therein, but in the possession of the
ed States. Hence, an ejectment brought
ıst such officer, under pretence of his being
ıt in possession, is without jurisdiction in
as a means of trying the title of the
ed States. *Opinion of Dec.* 4, 1854, 7 Op.

The United States having assumed the
ıse of such a suit, the public officer is to
ınsidered as a nominal party, and the suit
ıbject to the control of the Government.

The direction of the entire work on the new State, War, and Navy Department building, and the disbursement of the appropriations provided therefor, are by law devolved upon the Secretary of State. *Opinion of July* 3, 1874, 14 Op. 409.

4. The condition in the deed of the city of New York, conveying to the United States the site (viz, the lower part of the City Hall Park) of the new post-office and court-house building, by which the title is subject to forfeiture in case the ground conveyed ceases to be used for the purposes of a post-office and court-house or either, or in case it is used for any other public purpose, is not violated by the occupancy and use of some of the rooms in the new building by certain officers of the internal revenue, steamboat inspection, and other service under the control of the Treasury Department. *Opinion of March* 30, 1878, 15 Op. 477.

5. Under the provision in the act of June 18, 1878, chap. 263, authorizing the Secretary of War, "in his discretion, to expend the sum of $60,000, or so much thereof as may be necessary, in the construction of suitable buildings for store-houses and offices at Omaha, Nebr.," he would not be warranted in accepting a gift of land on which to erect such buildings; it appearing that the Government already owns land at Omaha which is available for the purpose, and it being fairly inferable that Congress intended to provide for the construction of the buildings thereon. *Opinion of Aug.* 9, 1878, 16 Op. 119.

6. The supervisors of Ontario County, New York, by authority of an act of the legislature of that State dated April 12, 1859, demised to the United States by a perpetual lease a certain part of the county court-house in the city of Canandaigua, some of the rooms within which part are used by the Post-Office Department for a post-office: *Held* that the law applicable to property of that description owned by the United States applies to the property perpetually leased as aforesaid. *Semble*, however, that an expenditure for lock-boxes for the post-office therein is one that appertains to the Post-Office Department and is properly chargeable to its appropriation. *Opinion of Jan.* 18, 1879, 16 Op. 255.

7. Opinion of January 18, 1879 (16 Op. 255), reconsidered, and in view of the fact that expenditures for providing and repairing lock-boxes in public buildings occupied for post-

offices have hitherto been made, and are still being made, from an appropriation under the control of the Secretary of the Treasury, and other circumstances: *Advised* that no immediate change of this practice be made, it not being so clearly without warrant of law as to render an immediate change imperative. *Opinion of Feb.* 10, 1879, 16 Op. 265.

8. The Secretaries of State, War, and Navy have no authority to modify the approval given by them under section 2 of the act of March 3, 1871, chap. 113, of the plans of the building now being erected for the use of those Departments. *Opinion of Dec.* 19, 1879, 16 Op. 651.

9. Where land, at the city of Omaha, Nebr., was *donated* to the United States for the purpose of a site for a certain public building, for the construction of which an appropriation was made by the act of June 23, 1879, chap. 35: *Held* that the consent of the legislature of the State to the grant is required by force of section 355 Rev. Stat. before any part of the appropriation can be lawfully expended in the erection of the building. (See joint resolution No. 9, of February 5, 1880.) *Opinion of Jan.* 7, 1880, 16 Op. 414.

PUBLIC LANDS.

See also LAND-GRANT ROADS; PACIFIC RAIL ROADS.

I. *Generally.*
II. *Disposal of.—Public Sales.—Private Entries.*
III. *Pre-emption.*
IV. *Purchase by Aliens.*
V. *Refunding Purchase Money.*
VI. *Land Warrants and Scrip.—Virginia Military Scrip.*
VII. *Land Warrants obtained by Fraud.*
VIII. *Surveys.*
IX. *New Madrid Certificates.—Location.*
X. *Town Sites.*
XI. *Suspended Entries.*
XII. *Patent.*
XIII. *Statutory Grant.*
XIV. *School-Land Grants.*
XV. *Swamp-Land Grants.*
XVI. *Grants in aid of Canals, Railroads, &c.*
XVII. *Indemnity for Lost Granted Lands.*
XVIII. *State Selections under Grants thereto.*
XIX. *Salt Springs.*
XX. *Mineral Lands.*
XXI. *Reservations for Public Use.—Sale of Military Sites.*
XXII. *Claims under Indian Treaties.*
XXIII. *Private Land Claims in California.*
XXIV. *Private Land Claims in Florida.*
XXV. *Private Land (including Back Land Pre-emption) Claims in Louisiana.*
XXVI. *Private Land Claims in Michigan.*
XXVII. *Private Land Claims in Mississippi Territory.*
XXVIII. *Private Land Claims in Missouri and Arkansas.*
XXIX. *Private Land Claims in New Mexico.*
XXX. *Private (including Donation) Land Claims in Oregon.*
XXXI. *Missionary Stations.*
XXXII. *Indian Title.*
XXXIII. *Intruders.—Cutting or Removal of Timber.*
XXXIV. *Construction of Road through.*
XXXV. *Registers and Receivers.*

I. Generally.

1. The act of 3d of March, 1791, chap. 27, directing the laying out of tracts of land to the inhabitants of Vincennes, did not authorize either the President or the governor to make conveyances for the allotments; and, if patents are necessary to confirm the titles, it yet remains with Congress to direct by whom they shall be issued. *Opinion of March* 25, 1794, 1 Op. 44.

2. The governor of Indian Territory cannot confirm unauthorized grants, unless actual improvements were made under them previous to 3d March, 1791, chap. 27; nor can he discriminate between the persons still holding their original grants and those who have had such grants confirmed by former governors, or have purchased under such confirmations, and have made improvements, unless such improvements were made previous to the 3d March. *Opinion of Dec.* 29, 1801, 1 Op. 95.

3. Under the act of 3d March, 1791, chap. 27, entitling the heads of families who had removed without the limits of the Northwestern Territory to the donation lands specified therein,

ersons only who returned to the Terri-
l occupied the lands within five years
e passing of the act are entitled to its
. *Opinion of March* 14, 1803, 1 Op.

is competent for the Secretary of the
y to deduct the expenses of surveys of
ls of the United States lying within the
f Ohio before computing the 3 per
which that State is entitled under the
March 3, 1803, chap. 21, and to calcu-
e percentage for Ohio on the balance.
of March 31, 1824, 1 Op. 640.

the matter of the Yazoo claims, the
nt's title to the lands having been de-
om the United States, his main ground
se will be the cession by Georgia to the
States, the several acts of Congress
g the claims, and the proceedings of
sioners under them. *Opinion of June*
, 2 Op. 36.

ie laws on the subject of public lands are
ari materiâ, and are all to be construed
r. No particular law should be con-
is an insulated act upon its own letter,
aving relation to the general system.
of Dec. 31, 1826, 2 Op. 44.

land certificate may, under the act of
, 1828, chap. 71, for the relief of Messrs.
., issue to A. M., the survivor of the
hich had purchased public lands at the
New York. *Opinion of May* 11, 1829,
3.

ts *in pari materiâ* are to be considered
aw; and those of May 24, 1828, chap.
d of January 6, 1829, chap. 2, are such
so far as settlers on land west of the
ial limits of Arkansas are affected.
of Dec. 8, 1829, 2 Op. 306.

actional quarter sections selected by
ernor of Arkansas Territory under the
acts of March 2, 1831, chap. 67, and
1832, chap. 172, must each be taken
of an entire quarter section. *Opinion*
8, 1836, 3 Op. 148.

dditional selections to make the com-
in quantity of ten sections need a
atory act of Congress. *Ibid.*

here there is a conflict between two
erived from the same source, either of
would be good if the other were out of
, the elder must prevail. *Opinion of*
, 1858, 9 Op. 254.

II. Disposal of.—Public Sales.—Private Entries.

12. Although the act of 3d March, 1803, chap. 21, was the affirmance of a compact between the United States and the State of Ohio, it must have been within the contemplation of the contracting parties at the time that Congress should retain the power of regulating the terms of the sales to be made. *Opinion of March* 31, 1824, 1 Op. 640.

13. The act of 22d May, 1836, chap. 143, for the relief of Alfred Flournoy, did not authorize an entry of reverted lands before they had been again offered at public sale; nor lands relinquished after the passage of the act. *Opinion of Dec.* 31, 1826, 2 Op. 44.

14 Sales of lands excepted from sale by act of Congress are void for want of authority. *Opinion of Oct.* 22, 1828, 2 Op. 186.

15. The decision of a court as to the invalidity of the claim causing the exception will not correct the error. *Ibid.*

16. A purchaser of a tract, as to part of which there was authority to sell, and as to the other part there was not, has the option to avoid the entire contract, or to receive a patent for such part as could be sold. *Ibid.*

17. Lands struck off on the last day of a public sale, and not paid for, are not subject to private entry prior to being again offered at public sale. Such tracts are not unsold lands at the close of the public sale, but are to be regarded as reverted lands. *Opinion of April* 1, 1829, 2 Op. 201.

18. The several acts of 3d March, 1819, chap. 98, of May 18, 1824, chap. 88, and of 24th May, 1828, chap. 96, authorize the correction only of entries of lands by money purchasers; and entries by Canadian volunteers are not such. *Opinion of June* 2, 1830, 2 Op. 341.

19. The first section of the act of 2d July, 1836, chap. 266, confirms sales that are fair and regular in all respects other than those provided for in the second section. To bring a case within the second section, it must appear that an entry has been made under the pre-emption laws, pursuant to instructions sent to the register and receiver from the Treasury Department, and that the proceedings have been, in all *other respects, fair* and *regular*. The Commissioner has to judge of the proof,

and may receive further evidence in support of the fairness and regularity of the claim. *Opinion of Aug.* 10, 1836, 3 Op. 149.

20. Where the purchase money is paid directly to the Treasurer, the specific tract of land must be stated the same as if applied for at the office of the land district, and the same form must be pursued. *Opinion of Oct.* 24, 1836, 3 Op. 150.

21. Where H. and F. applied at a land office to enter certain lands, but not being able to comply with the regulations of the Department, procured them to be marked and reserved from sale to T., who, soon thereafter, applied to purchase and pay for them and was refused; and afterwards H. and F. made payment and obtained a certificate of purchase: *Held* that the land officers should have complied with T.'s offer; and that, as a patent has not yet issued, the matter is yet under control of the General Land Office. *Opinion of June* 5, 1837, 3 Op. 240.

22. It is the duty of the Executive to secure to all persons a fair and equal opportunity of purchasing the public lands. *Opinion of July* 14, 1837, 3 Op. 274.

23. Lands that have been temporarily withheld from private sale should not be allowed to be entered until suitable notice has been given of the removal of the cause of suspension. *Ibid.*

24. The Treasury Department has no authority to require a certificate that notice has been given, or that lands are liable to entry; nor can the Treasurer refuse pay for a specific tract, unless he have official evidence that it is not subject to sale. *Ibid.*

25. Where a lot of land offered at auction at a public sale of land was struck off to A, who advanced the money and took a receipt therefor, and B on the same day offered evidence to prove that he nodded to the auctioneer, and that his nod was equivalent to a bid for said land above that of A, and that thereupon the land officers put up the land again on a subsequent day, and struck off the same to C, who conveyed it to B, who disputes A's title: *Held* that if B intended his nod at the first sale to be a bid above A he should have promptly disclosed it at the time and invoked the land officers to remedy the inobservance or neglect of the auctioneer; and that, as this was not done, the patent must issue to A, to whom it was struck off at the first sale. *Opinion of April* 10, 1839, 3 Op. 448.

26. It has been the position of the United States since the delivery of the opinion of Mr. Wirt (dated September 13, 1827, 2 Op. 57) that the acts of 26th March, 1804, chap. 38, erecting Louisiana into two Territories, and that of the 2d March, 1805, chap. 26, for ascertaining and adjusting the titles and claims to lands within the Territory of Orleans and the district of Louisiana, extended to the country west of the Perdido, to which the United States have always assented, and at length enforced their right under the treaty with France in 1803, and that between the Government and Spain in 1800. *Opinion of Nov.* 1, 1841, 3 Op. 697.

27. The Indian right of occupancy having been fairly extinguished by treaty, and the Government having come to be in full and complete possession of the lands in question, it had become both expedient and necessary that they should be surveyed and put into market. *Ibid.*

28. The surveyor of lands of the United States south of Tennessee was authorized to cause the surveys to be made; and his approval of the plats thereof is a sufficient authentication of both the survey and the plats. *Ibid.*

29. The President had a discretionary authority to proclaim these lands for sale immediately upon being informed that the surveys were made and proper land officers appointed to conduct them. *Ibid.*

30. Purchasers are chargeable with notice of the law respecting all former grants by Spain and France, and in relation to preemptions. *Ibid.*

31. In the case of an erroneous sale, in any respect other than failure of consideration by reason of want of title in the United States, the Secretary of the Treasury has no power to refund the purchase money, but relief must be sought at the hands of Congress. Nor ought a patent to issue so long as the surveys remain confused; but the same may be properly suspended until a report can be had or the facts concerning the lands be more fully ascertained. *Ibid.*

32. The lands of the Chickasaws were put on the same footing as the public domain, and are, therefore, not subject to private entry

shall have been proclaimed to
Opinion of March 29, 1843, 4

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hat private entries shall never
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f July 20, 1840, chap. 96, must
sectional lines, it follows that
cation for a location thereof on
nds could have been made be-
had been surveyed. *Opinion of*
4 Op. 442.

the Wyandot lands subject to
private entry. They were re-
fered at sale at not less than
Ibid.

of 11th February, 1847, chap. 8,
lands to non-commissioned of-
iers serving in the war with
ot authorize locations of land-
lands, the price of which is
acre by the act of 3d August,
The provision of the act of
to, was intended to operate on
ls which are subject to sale at
rice. *Opinion of Jan.* 18, 1848,

section of public land was in-
ther lands in the President's
r sale, and the sale took place,
in question was not sold, the
that such section was cried by
the auctioneer; and an applicant to enter the same, at private sale, need not be required by the register to prove that it was actually cried in the hearing of the bidders. *Opinion of Nov.* 29, 1851, 5 Op. 477.

40. An application for the purchase of land was rejected by the register, and the applicant then tendered the purchase-money to the Treasurer of the United States, who refused to receive it: *Held*, that the neglect of the applicant to appeal to the General Land Office was not an abandonment of his application. *Ibid.*

III. Pre-emption.

41. The rights of pre-emption, given to settlers by the act of 12th April, 1814, chap. 52, attach to settlers on lands set apart for bounties by the act of 6th May, 1812, chap. 77, who settled thereon prior to the surveys, but not to those who settled thereon subsequently. *Opinion of Aug.* 28, 1819, 1 Op. 291.

42. The pre-emption claims cannot be ascertained and decided upon by any other agency than that of registers and receivers of the land districts in which they are situate. *Ibid.*

43. The language of the act 26th May, 1824, chap. 154, granting pre-emptions in the Lawrence district, is in the present tense. Therefore, lands ceded to the United States by the Quapaw treaty of January 18, 1825, although within the Lawrence district, are not subject to pre-emption. *Opinion of Dec.* 4, 1826, 2 Op. 42.

44. Pre-emptions under contract with John C. Symms could not be entered on lands lying between Roberts's and Ludlow's lines. Congress could not have intended that Symms's contract should interfere with the Virginia military reservation. *Opinion of July* 20, 1829, 2 Op. 246.

45. Lands relinquished and reverted are not subject to pre-emption under the act of May 29, 1830, chap. 208. *Opinion of Aug.* 23, 1830, 2 Op. 367.

46. Where first settlers have rented their improvements to others, landlords, not tenants, are entitled to pre-emptions. The object of the law was to secure improvements to those making the expenditures. *Ibid.*

47. It would be unsafe for the land officers to permit entries and to receive purchase-moneys from persons not claiming pre-emption

rights, without first ascertaining whether there is a settler on the land entitled to pre-emption; but such right is inchoate, and can only become complete by making the proof and payment required by the act during its continuance, and, consequently, will not prevent the emanation of a patent after the act has expired if these requisites have not been complied with. *Ibid.*

48. Proof and entry may be made at any time within the life of the act of 29th May, 1830, of lands subject to private sale at its passage. *Ibid.*

49. A claim entered by a *bona fide* purchaser, although at private entry and without notice, is not forfeited. *Ibid.*

50. Where a settler has obtained a right of pre-emption to one quarter section, and has made improvements on another tract of land which he has leased, the lessee, as such, is not entitled to the pre-emption. *Opinion of Sept.* 16, 1830, 2 Op. 383.

51. No pre-emption claim set up by any person will justify the cutting of timber from such lands, until title to the land claimed is acknowledged by the Government, or maintained by the judgment of the court. *Opinion of June* 9, 1832, 2 Op. 524.

52. The revival of the pre-emption act of May 29, 1830, chap. 208, by the act of the 19th June, 1834, chap. 54, embraces the provisions ingrafted thereon by the supplementary act of January 23, 1832, chap. 9. *Opinion of March* 6, 1835, 2 Op. 701.

53. Pre-emption accrues to aliens under the acts of May 29, 1830, chap. 208, and June 19, 1834, chap. 54, especially where the local law authorizes them to hold and convey real estate. *Opinion of April* 18, 1836, 3 Op. 90.

54. The assignee of a pre-emption certificate takes it subject to the equities subsisting between the settler and the United States. The legal title is in the United States, until a patent issues; and where the equities are equal, the legal title will prevail. *Opinion of April* 18, 1836, 3 Op. 92.

55. There is reason to doubt whether a pre-emption to an accumulation of land in the Mississippi can be allowed to exist. *Opinion of April* 23, 1836, 3 Op. 102.

56. The lands ceded by the Quapaw treaty of August, 1818, are not subject to pre-emption under the act of April 12, 1814, chap. 52. The Indian title not having been extinguished, they could not have been settled prior to the date of that law, consistently with the claim of the Quapaws. *Opinion of May* 3, 1836, 3 Op. 106.

57. Legal evidence from competent sources (excluding the oaths of claimants and all interested parties) is what is intended by the word "proof," contained in the act of the 29th May, 1830, chap. 208. The Commissioner of the General Land Office may prescribe the mode and kind of proof; how and by whom it should be taken; but cannot prescribe anything as proof which is not such in fact, nor any rule as to its weight and force. *Opinion of June* 21, 1836, 3 Op. 126.

58. Any entry allowed by the register and receiver, upon the affidavit of the interested party, and only corroborated by facts within their knowledge, is only erroneous and voidable, not void as against the United States. *Ibid.*

59. Settlers or occupants within the meaning of the law, are those who resided personally on the public land in question, or who occupy and use it. Settlement and occupancy cannot be effected by proxy. *Ibid.*

60. Pre-emption floats mislaid on lands subject to another right of preference may be raised, and properly relocated at any time prior to the public sale of the lands, including the tract on which the original right accrued, but not afterwards. *Opinion of June* 24, 1836, 3 Op. 133.

61. By the terms "settlers" and "occupants" used in the pre-emption acts, is meant those who personally cultivate and reside on, or who personally cultivate, use, and manage the public lands. *Opinion of March* 29, 1837, 3 Op. 182.

62. Actual residence on the land is not indispensable, yet, with cultivation, it is the highest evidence of that *personal connexion* which *is* indispensable. *Ibid.*

63. The head of a family whose dwelling is not on the land, but who improves and cultivates by the application of his personal labor, or that of his family, hired men, servants, or slaves under his direction, is entitled to the benefits of the law. *Ibid.*

64. The law of landlord and tenant is inapplicable to the subject of pre-emptions; yet, as it has been made the basis of instructions, the

ule ought to be followed. The act of 2d July, 836, chap. 266, confirms such entries. *Ibid.*

65. A pre-emptor cannot be undermined by subsequent fraudulent purchaser. *Ibid.*

66. Pre-emption acts of May 29, 1830, chap. 08, and June 19, 1834, chap. 54, re-examined nd explained. *Ibid.*

67. The act of July 14, 1832, chap. 246, is an mendment of the act of May 29, 1830, chap. 08, which is revived by the act of June 19, 834, chap. 54, and is to be considered a part hereof. *Opinion of April* 8, 1837, 3 Op. 195.

68. A failure to pay for a pre-emption before public sale of the lands in which it is situted forfeits the right, and consequently the ight to select eighty acres elsewhere; it may e saved, however, by a tender of payment in ue time. *Opinion of April* 27, 1837, 3 Op. 11.

69. A tender for the original tract and for he tracts selected, with a condition that the rst shall not be received without the latter, s a good tender, provided all the tracts are iable to be selected; otherwise, not. *Ibid.*

70. A pre-emptor may float a tract returned s a regular half-quarter section, and two pre-mptors may float tracts that do not in the ggregate exceed 160 acres. He may select ubdivisions of fractions where the land dis-rict contains no regular half-quarters, but in uch cases should be confined to those contain-ng the least excess over 80 acres. *Ibid.*

71. Where the district contains regular half-quarters, the two floats cannot take fractions, which, united, amount to over 160 acres. *Ibid.*

72. Designating a tract before the coming in of a plat, so as to enable the proper officer to locate, is sufficient. Error in description is not fatal if the tract be identified. *Ibid.*

73. A person who inhabited one quarter section and cultivated another, of which he was in possession on the 19th June, 1834, is entitled under the first section of the act of June 19, 1834, chap. 54, to enter the same after six months from the date of that act. *Opinion of July* 10, 1837, 3 Op. 258.

74. But the option of entering either quarter section, under section 2 of that act, is lost by neglecting to make the application within six months. *Ibid.*

75. An officer of the Army of the United States in actual service may have a valid pre-emption claim as settler or occupant of public lands, although it may seem to be incompatible with the condition of an officer in actual service. *Opinion of Jan.* 19, 1838, 3 Op. 303.

76. As to the personal residence and inhabitancy on public lands necessary to confer the right of pre-emption, former opinions on the subject are referred to, indicating that where there is but a partial cultivation under the immediate personal direction of the claimant as the head of a family by himself, hired men, servants, or slaves, and a settlement and occupation actually intended to be made, and is subsequently made, by the claimant, he is entitled to the benefit of the laws. *Opinion of March* 10, 1838, 3 Op. 309.

77. Where the improvement is on a fractional section containing over 160 acres, the claimant may enter, in conformity with the legal subdivisions recognized by the acts of May 29, 1830, chap. 208, and June 19, 1834, chap. 54, a quantity of land not exceeding 160 acres. *Opinion of March* 16, 1838, 3 Op. 313.

78. A 40-acre lot created by the operation of the act of April 5, 1832, chap. 65, is not such a legal subdivision, and cannot be taken in addition to the fractional quarter containing the pre-emptor's improvement. *Ibid.*

79. The third article of the circular of the Commissioner of the General Land Office, dated July 22, 1834, and the third and eighth article of the circular of October 21, 1834, are not inconsistent with the law. *Ibid.*

80. The right of pre-emption attaches only to such public lands as are subject to the operation of the general land system of the country, and not to those which have by the act of Congress been taken out of the class of public lands and appropriated to specific objects, or reserved for particular purposes, as for the cultivation of the vine and olive. *Opinion of April* 18, 1839, 3 Op. 456.

81. The dwelling house of a pre-emptor being on a fractional section, and his improvements extending over upon another fractional section and upon an entire one, his right of pre-emption cannot be admitted to the three, but is limited to his domicile and one of the other two sections of land. *Opinion of July* 8, 1840, 3 Op. 564.

82. The permissive possession of twenty-seven years may give the party strong equities, which may be addressed to the legislature; yet

the land officers can only be governed by existing acts of Congress. *Ibid.*

83. The right of pre-emption, if otherwise mature, may be allowed to lands reserved from sale, under the supposition that they fell within the limits of the grant in aid of the Milwaukee and Rock River Canal, but subsequently found not to be included. *Opinion of July* 25, 1840, 3 Op. 577.

84. The disallowance of a pre-emption claim made by an assignee of a certificate of purchase by the register and receiver, who had competent authority to judge of its validity, on grounds satisfactory to them that it was unfounded, is conclusive against the claim. *Opinion of Oct.* 19, 1841, 3 Op. 664.

85. The acquittal of McDonald and Norton for perjury, charged to have been committed in swearing to the affidavit upon which the claim of pre-emption was grounded, is not conclusive upon the United States in the land department. *Ibid.*

86. Certain pre-emptioners in the Cherokee country are entitled to a year to make proof and complete entries. *Opinion of April* 27, 1842, 4 Op. 20.

87. The acts of June 22, 1838, chap. 119, and June 1, 1840, chap. 32, revived the law of May 29, 1830, chap. 208; and the principle laid down in the opinion of the Attorney General, dated April 8, 1837 (3 Op. 195), is applicable to the claimants in the present case. *Ibid.*

88. Pre-emptioners, under the act of June 19, 1834, chap. 54, have not the right to a survey and patent of land surveyed for town lots and streets, under the acts of July 2, 1836, chap. 262, and March 3, 1837, chap. 36, in the Territory of Iowa. *Opinion of April* 29, 1842, 4 Op. 23.

89. The pre-emption grants give to the pre-emptioner a *jus ad rem*, but not a *jus in re;* and such a right, resting in contract, cannot always be carried out by specific performance. *Ibid.*

90. The Secretary of the Treasury has no power to order surveys of these town lots and streets into farm lots to suit the wishes of pre-emptioners, in order to perform specifically one act of Congress which is in conflict with later acts requiring a different survey. *Ibid.*

91. Certain claims of pre-emption rights to lands acquired by the treaty with the Miamies of November 6, 1838, *held* not allowable under the acts of Congress. *Opinion of Aug.* 19, 1842, 4 Op. 89.

92. The sales made to pre-emptioners within the admitted or ascertained limits of the Houma grant are entirely void under the sixth section of the act of Feb. 15, 1811, chap. 14. Patents should therefore be refused on all certificates on sales which fall within that category. In the cases of patents issued there is no remedy except in the courts. *Opinion of Sept.* 2, 1842, 4 Op. 92.

93. Free colored persons are entitled to the benefits of the pre-emption act of Sept. 4, 1841, chap. 16. The plain meaning of the act is to give the right of pre-emption to all denizens. Aliens only, in the proper acceptation of the term, are excluded from the right. Free colored people are distinguished from aliens, even where slavery exists, and are capable of all the rights of contract and property. *Opinion of March* 15, 1843, 4 Op. 147.

94. The residence required by act of June 1, 1840, chap. 32, is limited to the date of that act, and need not have continued for four months next preceding it, as required by the act of June 22, 1838, chap. 119. *Opinion of July* 29, 1843, 4 Op. 198.

95. Pre-emptioners under the act for the armed occupation and settlement of the unsettled part of the peninsula of east Florida, approved August 4, 1842, chap. 122, have no right to cut live-oak or other timber for any purpose other than to clear, improve and fence their land, until after the five years' occupation shall have enabled them to acquire a perfect title. *Opinion of July* 16, 1845, 4 Op. 405.

96. All lands within the prescribed limits as to boundary and quantity were open for such settlement, with the single reservation contained in the third section, which prohibits any such settlement within two miles of any permanent military post of the United States, established and garrisoned at the time such settlement and residence was commenced. *Ibid.*

97. Settlers upon the public land must comply with the conditions of the land laws in order to avail themselves of the privilege of pre-emption. *Opinion of April* 25, 1846, 4 Op. 493.

98. They must give the written notice of their settlement and intention to claim the right of pre-emption within thirty days from

e of their entering personally on the th the intention of settling there. *Ibid.*
hey must also inhabit, improve, build, d make proof, within twelve months, ntitled to preference over those who ve entered the same lands at the land *Ibid.*

Where a settler upon certain public the east bank of the Mississippi River— when subsequently surveyed, was des- as the southwest fractional quarter of 25—failed to make payment therefor the day appointed for the public sale s in that vicinity, and by his agent, on y, refused to enter and pay for the nless he could be permitted also to e southeast fractional quarter section; t being gratified in that respect (the icers refusing his request, and offering lands at public sale, and actually sell- southeast fractional quarter, and after- btaining a confirmation of their pro- s), by his agent having applied to the ry of the Treasury for a hearing in re- his claim of pre-emption: *Held*, that doned his claim by refusing to make t unless he could be permitted to enter theast fractional quarter section, and r such refusal he forfeited all right he had previously acquired to the s. *Opinion of October* 27, 1847, 4 Op.

The pre-emption act of June 19, 1834, , expressly declares that its provisions t be available to those who fail to make f and payment required before the day ed for the commencement of the public *bid.*

The claim presented having no merit r equity, the decision of the Commis- f the General Land Office, approving ceedings of the register and receiver, be affirmed. *Ibid.*

By treaty between the United States eral tribes of Indians in the Territory as, the latter ceded certain lands to the States on condition that a part of the ould be held in trust by the United o be sold at public auction for the bene- uch Indians. Afterwards, by act of s, all the lands in the Territory to he Indian title had been extinguished ade subject to the laws of pre-emption: *Held*, that the provision does not include the lands thus reserved by the treaties for public sale for the benefit of the Indians. *Opinion of Aug.* 12, 1854, 6 Op. 658.

104. Indians are not capable of pre-empting the public lands of the United States. *Opinion of July* 5, 1856, 7 Op. 746.

105. Where a person claiming a pre-emption right was shown to have located Louisiana internal-improvement scrip on more than 320 acres of other land at the time he made his entry of the land in question, it was *held* that his title thereto was defeated. *Opinion of Nov.* 15, 1860, 9 Op. 499.

106. The affidavit of a party claiming a pre-emption right denying the ownership of other land is only one means of ascertaining the fact. It is not conclusive, and the contrary may be shown by other evidence. *Ibid.*

107. Where a settler made a mistake in his declaratory statement as to the particular tract intended to be claimed, but failed for three years to make the necessary proof and payment, and during his lifetime the land in controversy was granted away by Congress, it was *held* that a pre-emption entry of his heirs was not confirmable by the Commissioner of the Land Office. *Opinion of Nov.* 26, 1860, 9 Op. 515.

108. Where a person in 1829 entered upon public land and occupied and improved the same continuously until the passage of the act of May 29, 1830, chap. 208, but took no steps to enter with the register of the land office, under that act, the land so occupied and improved until 1838: *Held*, that by operation of the act of April 20, 1832, chap. 70, exempting from sale or appropriation the land in question, he had lost his right of entry. *Opinion of June* 12, 1861, 10 Op. 56.

109. The aforesaid act of May 29, 1830, which granted pre-emption rights to settlers on the public lands, did not vest in a settler any right to the land occupied and improved by him. It gave him only a contingent right to become the first purchaser of the land, without competition, when it should be brought into general market. And the Government had a right, at any time before proof and payment were made by such settler, to reserve the land from sale and deprive him of the privilege conferred by that act. *Ibid.*

110. The decision of the register and re-

ceiver of the land office that a claimant had settled upon and occupied land in accordance with the act of May 29, 1830, is not of necessity final and conclusive. *Ibid.*

IV. Purchase by Aliens.

111. A party, *prima facie* entitled to pre-emption, should not be precluded from receiving a patent for the land by the mere allegation of his being an alien. *Opinion of May* 27, 1852, 5 Op. 551.

112. Under the land laws of the United States, aliens are entitled to purchase the public lands, subject only, as to their tenure, to such limitations as particular States may enact; with this exception, however, that pre-emptions are secured to aliens who have declared their intention to become naturalized according to law, and to citizens whether native-born or naturalized, and to none others. *Opinion of July* 28, 1855, 7 Op. 351.

113. The same distinction is maintained in the graduation acts, with the further condition that the limited quantity of land purchasable by any person at the reduced prices can be purchased only for personal use and for actual settlement and cultivation. *Ibid.*

V. Refunding Purchase-Money.

114. Repayment of purchase-money should be made in cases where the purchase of land from the United States is found to be void by reason of a prior sale, or by the confirmation or other legal establishment of a prior, British, French, or Spanish grant, or for want of title in the United States from any other cause (see act of January 12, 1825, chap. 5). *Opinion of Aug.* 14, 1843, 4 Op. 228.

115. Instances where there is a deficiency in the quantity of land purchased, and where an entry has been made of land to which another had a pre-emption right, are cases falling within the terms of the act of 12th January, 1825, chap. 5, and call for repayment. *Ibid.*

116. But in cases of error arising from miscalculations of the amount to be paid, where the money paid has not been returned by the receiver, the excess should not be paid from the treasury; but the error should be corrected by the receiver. Where, however, the excess or over payment shall have found its way into the Treasury, it cannot be withdrawn except in strict fulfillment of the requisitions of law, which the "administrative power" cannot control. *Ibid.*

117. The case of Wilson Shannon does not come within the provisions of the act of the 12th January, 1825, chap. 5, and, therefore, the Treasury Department has no authority to refund to him. *Opinion of Sept.* 29, 1843, 4 Op. 253.

118. Even though the funds of Shannon were not received into the public treasury, and it be conceded that the United States have no equitable claim upon them, there is no act authorizing repayment of money wrongfully or erroneously paid, except the act of 12th January, 1825, which applies to certain specified cases. *Ibid.*

119. It would not do for the Department to refund money which has erroneously found its way there, simply on the ground that it is just that it should be repaid, for the reason that it would require the Department to disregard a most wholesome and salutary restraint, upon the due and strict observance of which the most important interests depend. *Ibid.*

VI. Land-Warrants and Scrip.—Virginia Military ditto.

120. If the Government issue a land-warrant for a claim on which it had granted a former one, the circumstance does not deprive the first warrantee of his rights. *Opinion of March* 22, 1815, 5 Op. 702.

121. The bounty lands mentioned in the act of January 11, 1812, chap. 14, may be commuted under the act of April 16, 1816, chap. 55, notwithstanding the death of the soldier. *Opinion of June* 17, 1816, 5 Op. 702.

122. Land-warrants, by the laws of Virginia, are not mere chattels, but are regarded as a kind of inchoate title to lands, and descend to heirs. *Opinion of Oct.* 8, 1819, 1 Op. 311.

123. A land-warrant held in the right of a feme covert must be assigned by her with her husband in order to transfer it. *Ibid.*

124. Military bounty land-warrants to Canadian volunteers, under the act of March 5, 1816, chap. 25, are not assignable. Such warrants, when fraudulently obtained, may be canceled so as to prevent their use for any mischievous purpose. *Opinion of Dec.* 26, 1819, 1 Op. 326.

125. Canadian volunteers may locate lands for which warrants have been issued to them,

by attorney, the same as others similarly entitled have been accustomed to do. *Opinion of Dec.* 29, 1820, 1 Op. 424.

126. Land-warrants, issued under the act of 3d March, 1807, chap. 32, must be received at the rate of $2 per acre in payment for any lands west of the Mississippi. The act of 24th April, 1820, chap. 51, does not affect their value. *Opinion of Jan.* 29, 1822, 1 Op. 536.

127. As the owner of a land-warrant may locate it in as many several parcels as he pleases, he may demand and take a grant for each. *Opinion of April* 19, 1826, 2 Op. 26.

128. He may assign any portion of his warrant to a third person, who may, upon the authority of such assignment, make entries in his own name and take out grants to himself therefor. *Ibid.*

129. Four out of ten children may assign their rights in an unlocated warrant issued to their father, and the assignee may enter the lands in his own name and demand grants therefor in severalty. *Ibid.*

130. The provisions of section 1 of the act of 20th May, 1826, chap. 138, are not limited to Virginia military land-warrants obtained after the passage of the act. *Opinion of Oct.* 22, 1829, 2 Op. 280.

131. The terms "any such warrant" relate to Virginia military land-warrants issued previous, as well as subsequent to the act. *Ibid.*

132. Congress intended to subject these claims, in their progress from entry to patent, to the supervision of the Secretary of War. *Ibid.*

133. Land scrip issued upon the surrender of warrants issued for bounty lands granted by the United States, and by the State of Virginia for services in the Revolution, should issue to the parties *nominatim*, and to heirs on due proof of heirship. *Opinion of Oct.* 1, 1830, 2 Op. 385.

134. When issued according to the terms of the warrant, in certain cases, they must be assigned by all the heirs by name and accompanied with proof of identity, heirship, and proof of assignment. *Ibid.*

135. It must issue to the heirs or assignees, and not to executors nor administrators; for it is to be considered as belonging to the realty. *Ibid.*

136. A warrant for bounty land should issue to the applicant really entitled thereto, notwithstanding a warrant and patent for the same land may have been fraudulently obtained by another person who personated the proper claimant. *Opinion of March* 19, 1832, 2 Op. 501.

137. Land-warrants for bounty lands are real estate, and where parties first entitled have died, they must, in general, issue to heirs or devisees, not to administrators with wills annexed. *Opinion of March* 28, 1832, 2 Op. 506.

138. Virginia land scrip is so far the representative of money as to be subject to the same equitable deductions, in case of indebtedness to, or frauds committed upon, the Government, as may be made in the case of a sum of money due from the Government to one of its debtors. *Opinion of Feb.* 9, 1836, 3 Op. 35.

139. Land scrip issued pursuant to the act of 30th of May, 1830, chap. 215, for the relief of certain officers and soldiers of the Virginia line and navy, must be made out in the names of the persons *prima facie* entitled to it. *Opinion of April* 23, 1836, 3 Op. 98.

140. If there be equitable assignees of the whole or any part of the scrip which may be issued, and they shall claim the same in hostility to the parties originally entitled, the scrip, if delivered at all, ought to be delivered to the parties originally entitled, their heirs, devisees, or other agent or agents, as contradistinguished from persons claiming interests, as assignees or otherwise, by contract. *Ibid.*

141. But where the Department sees that the just claims of other persons will be liable to be defeated by such delivery of the scrip, it may lawfully suspend the actual delivery until claimants can have time to apply to a court of equity for an injunction; and if it be procured, to retain the scrip until the rights of the parties can be judicially determined. *Ibid.*

142. The Treasury Department may suspend the issuing of all or any portion of the scrip claimed on a warrant issued for a greater number of acres than may appear to be due, until the true amount can be ascertained. *Opinion of April* 28, 1836, 3 Op. 103.

143. Scrip for revolutionary land-warrants may be issued; and for that purpose the first section of the act of May 30, 1830, chap. 215, is now in force. *Opinion of June* 14, 1837, 3 Op. 246.

144. Land scrip issued in satisfaction of military bounty land-warrants must be regarded

as real estate, which upon the death of the holder goes to the heirs-at-law, and not to the executors and administrators. *Opinion of Nov.* 9, 1838, 3 Op. 382.

145. Scrip may be issued, under the act of March 3, 1835, chap. 30, on a Virginia land-warrant dated subsequent to September 1, 1835, in cases where it shall appear that such warrant is not an original one, but was only issued in place of one issued improvidently to wrong heirs prior to September 1, 1835, and canceled by Virginia, as it is in the nature of an exchange warrant, and may be treated as if issued within the time provided by law. *Opinion of Feb.* 18, 1840, 3 Op. 499.

146. The heirs of Captain Kirkwood, who entered the revolutionary service in the Delaware regiment in the year 1776, and continued in service until the end of the war, are entitled to scrip on a warrant issued for three hundred acres of land on account of his services, whether they were properly entitled to scrip on a warrant for four thousand acres, issued by the executive of Virginia, or not. *Opinion of July* 1, 1840, 3 Op. 557.

147. It appears that by a construction given to certain acts and resolutions of Congress, and of Virginia, such of the troops from other States as were in the course of the war attached to the Virginia State establishment, and continued in service to the end thereof, were entitled to the same bounty from Virginia as if they were originally raised in that State. *Ibid.*

148. In case the Secretary of the Treasury shall have any good reason to believe that such warrants have been issued in error or mistake, he may suspend the issue of scrip; or, if issued, cause measures to be taken to have it canceled. *Ibid.*

149. Where a land-warrant issued to the administrator *de bonis non* of a deceased colonel of the Virginia line for services rendered by him in the Revolutionary War, and the said administrator proposed to surrender it, and to receive scrip in lieu thereof, for the benefit of the devisees named in the decedent's will, pursuant to the act of Congress for the relief of certain officers and soldiers of the Virginia line and navy, and of the Continental Army: *Held*, that as the warrant issued to the administrator with the will annexed, for the benefit of the devisees, scrip in exchange may issue in the same manner and for the same purpose. *Opinion of March* 24, 1851, 5 Op. 308.

150. The Commissioner of Pensions cannot lawfully issue more than one warrant on a soldier's claim for bounty land. *Opinion of June* 28, 1851, 5 Op. 388.

151. If, through mistake or fraud, he shall issue more than one warrant upon the same claim, he will have transcended his authority, and performed an act having no legal validity. *Ibid.*

152. The regulation, established by the Commissioner of the General Land Office, requiring holders of land-warrants to make affidavit that there is no settlement on the land intended to be located, is inconsistent with the act of February 11, 1847, chap. 8, and void. *Opinion of Aug.* 7, 1852, 5 Op. 609.

153. Where a volunteer was regularly mustered into service according to the act of May 13, 1846, chap. 16, but honorably discharged before marching to the seat of war, or performing any warlike duty: *Held*, that he is entitled to bounty land under the act of February 11, 1847, chap. 8. *Opinion of Sept.* 2, 1852, 5 Op. 617.

154. The United States have assumed all unsatisfied outstanding military land-warrants of the State of Virginia, issued by the proper authorities thereof, for revolutionary services of its officers, soldiers, seamen, and marines, such warrants having been fairly and justly issued in pursuance with the laws of the State. *Opinion of Jan.* 7, 1854, 6 Op. 243.

155. Persons called in the laws of Virginia "supernumerary officers," and in the resolves of Congress "deranged officers," are to be treated as in service, and warrants issued to them by the State for additional land on account of such services are entitled to be exchanged for land scrip of the United States. *Ibid.*

156. By the laws of the State of Virginia, the legal representatives, the heirs, or devisees of any one of her officers or privates who fell or died in service during the Revolutionary war are entitled to the same quantity of bounty-land as would have been due to him had he continued to live and to serve to the end of the war, and warrants therefor lawfully issued are to be satisfied by scrip of the United States. *Opinion of Jan.* 9, 1854, 6 Op. 258.

157. An unliquidated claim to bounty-land

scrip in Virginia passes by a clause of general residuary devise. *Opinion of Sept.* 13, 1854, 6 Op. 716.

158. An administrator of the estate with such will annexed, who, as such, received the bounty-land warrant under the authorities of the State of Virginia, is entitled to receive the scrip in exchange from the United States. *Ibid.*

159. Land scrip of the United States, issued in exchange for bounty-land scrip of the State of Virginia, has in some respects the qualities of real and in some of personal estate; but the determination of who is entitled is independent of that question, being specially defined by acts of Virginia or of the United States. *Opinion of Nov.* 11, 1854, 7 Op. 32.

160. The act of March 3, 1855, chap. 207, section 1, embraces not only militia or volunteers whose military services were performed under the general command of the United States and in time of war, but also such as rendered military service, whether in war or not, and whether under the immediate authority of the United States or of a State or Territory, but who shall have been paid for such service by the United States. *Opinion of Dec.* 14, 1855, 7 Op. 606.

161. The decisions of the courts of Virginia in regard to conflicting claims to bounty-land warrants under the laws of that State are to be considered as determining their relative rights, and to be respected by the United States. *Opinion of March* 10, 1856, 7 Op. 652.

162. But where it has not been satisfactorily determined by the courts of Virginia which of two persons "presenting" themselves is the true party entitled, the Secretary of the Interior may well refuse to issue scrip to either. *Ibid.*

163. Unlocated land scrip of the State of Virginia belonging to the estate of the Baron Steuben, being personal estate, is subject to the testamentary provisions of Baron Steuben's will, proved in the State of New York, and therefore demandable, on the failure of testamentary trustees, by a trustee duly appointed by the courts of New York. *Opinion of May* 21, 1856, 7 Op. 688.

VII. Land-Warrants Obtained by Fraud.

164. Evidence sufficient to raise a presumption of fraud in obtaining a Canadian volunteer land-warrant having been furnished, the patent should be withheld until ordered by Congress or the judiciary. *Opinion of April* 27, 1822, 5 Op. 745.

165. A land-warrant fraudulently obtained from the Commissioner of Pensions in the name of a person deceased without heirs or widow, or of a fictitious person, is a mere nullity, incapable of lawful assignment, and may be rejected or canceled by the Commissioner of Public Lands. *Opinion of March* 15, 1856, 7 Op. 657.

166. But when the Commissioner has duly issued a military land-warrant, valid on its face, to a person *in esse* and capable of assigning, and such warrant has passed by lawful assignment to a *bona fide* purchaser for value without notice, the government cannot cancel such warrant on the ground that the Commissioner issued it in misapprehension or on imperfect or false evidence. *Ibid.*

VIII. Surveys.

167. The surveyor of public lands in the Territories of Illinois and Missouri, under the power conferred to engage surveyors as his deputies, and to perform all and singular the duties which were required by law to be performed by the surveyor-general, may let the work by contract. *Opinion of June* 10, 1824, 1 Op. 661.

168. It is his duty to fix the compensation of the deputy surveyors, chain-bearers, and axmen; and it is not perceived how this can be done but by contract, for no deputy surveyor is under any obligation to accept or retain his place, unless the compensation shall be satisfactory. *Ibid.*

169. Fixing compensation by contract is doing all the law requires of the surveyor in that respect; he fixes the compensation. *Ibid.*

170. The Government will not complain of a practice which it has sanctioned, and which does not appear to have been attended with any injurious consequences. *Ibid.*

171. The President had authority to direct a survey of the public land lying south of the thirty-first degree of latitude. *Opinion of Sept.* 13, 1827, 2 Op. 57.

172. The surveyor south of Tennessee and the surveyor of the State of Alabama are the proper officers to authenticate the township plats, and not the principal deputy, under the act of March 3, 1819, chap. 100. *Ibid.*

173. The act of April 24, 1820, chap. 51, and the instructions issued under it, directing the manner of subdividing fractional sections containing over 160 acres, did not require the absolute platting of every quarter or half-quarter of which the section was susceptible; but contemplated the exercise of discretion so as to prevent small and inconvenient fractions of a fractional section. *Opinion of Aug.* 2, 1837, 3 Op. 281.

174. It is the duty of the surveyors-general to subdivide fractional sections in conformity to law, and without reference to the existence of the pre-emption acts of May 29, 1830, chap. 208, and June 19, 1834, chap. 54. *Ibid.*

175. It is the duty of surveyors-general to divide fractional sections containing over 160 acres into lots approaching as nearly as practicable to the form and quantity of half-quarter sections; and it is competent for the department to direct the performance of the duty. *Opinion of Aug.* 5, 1837, 3 Op. 285.

176. The survey is to be made without reference to pre-emptions; but pre-emptors are entitled to a legal survey. *Ibid.*

177. The surveyor of lands of the United States south of Tennessee was authorized to cause the surveys to be made (of the country west of the Perdido); and his approval of the plats thereof is a sufficient authentication of both the survey and the plats. *Opinion of Nov.* 1, 1841, 3 Op. 697.

178. There has been no form for the surveyor's approval of plats prescribed. The substance and spirit of the whole policy in respect to approvals were that the surveyor should not only cause the lands to be surveyed and platted, but should see to it and satisfy himself that the plats corresponded with the field-notes, and when satisfied to return the plats to the proper office. *Ibid.*

IX. New Madrid Certificates.—Location.

179. Where the register at Kaskaskia had issued two certificates for the same land to two different persons: *Held*, that the first had preference. *Opinion of Aug.* 8, 1816, 1 Op. 191.

180. In the location of certificates issued under the act of February 17, 1815, chap. 45, the general plan of surveying the public lands must be adhered to. *Opinion of May* 11, 1820, 1 Op. 361.

181. When the holder of a New Madrid certificate calls for a quantity of land greater than 160 acres, and less than 640, and it becomes necessary to subdivide a quarter section, it should only be done by making the subdividing line parallel and coextensive with the line of the contiguous quarter. *Opinion of June* 19, 1820, 1 Op. 373.

182. Such certificates may be located on a fractional section or part of it, but not so as to appropriate all of the local advantages to the injury of the public. *Ibid.*

183. Holders of certificates may take less than 160 acres, if they can find such a tract liable to sale. *Ibid.*

184. Locations made in a square previous to the sectional lines being run, &c., are inadmissible, as the sale is unauthorized until the sectional lines are run. *Ibid.*

185. Patents may not issue on the New Madrid locations which were made on lands not authorized to be sold. *Opinion of June* 22, 1820, 5 Op. 727.

186. No person can locate over 160 acres under a New Madrid certificate, unless the aggregate of lands lost exceeds 160 acres; in which case he can locate not exceeding 640 acres. *Opinion of Jan.* 22, 1822, 1 Op. 534.

187. New Madrid certificates located on lands, the claims to which had been previously filed with the recorder of land titles in Missouri, are invalid. The acts of 3d March, 1811, chap. 46, and 17th February, 1818, chap. 12, permanently reserved such lands. *Opinion of Oct.* 10, 1825, 2 Op. 15.

188. A New Madrid location of lands upon a tract confirmed to the heirs of James Mackay must yield to the title of the confirmees, as the "sale or other disposition" referred to in the 11th section of the act of May 26, 1824, chap. 173, is to be understood to mean a sale or disposal in conformity to law. *Opinion of Aug.* 8, 1838, 3 Op. 354.

X. Town Sites.

189. Portions of the public lands, to the amount of 320 acres, may be taken up by individuals or pre-emptioners for city or town sites. *Opinion of July* 2, 1856, 7 Op. 733.

190. The same rules as to proof of occupation apply in the case of municipal as of agricultural pre-emption. *Ibid.*

191. The statute assumes that the purposes

f a city or town have preference over those of ade, and still more over those of agriculture. et individuals may take for either of the latter bjects: *a fortiori* they may take for a city or own. *Ibid.*

192. Under the act of May 23, 1844, chap. 7, the mayor of a town has authority to make n entry of the public lands occupied as the own site, as the official organ of the corporate uthorities. *Opinion of March* 21, 1859, 9 Op. 08.

XI. Suspended Entries.

193. Where certain lands were withdrawn o supply certain land grants, as to a part of hich lands the Commissioner of the General and Office afterward ordered notice to be iven, by advertisement, restoring the same o private entry, and, pending the advertisement, erroneously instructed the register and eceiver that certain other lands were included n such notice, in accordance with which instruction the latter were offered at private ale by the register and receiver, and were hereupon entered and paid for by S. and W.: *Held*, that these facts are sufficient to give the oard of adjudication of suspended entries urisdiction of the claim of S. and W. to a atent for the land entered by them, and that f, upon investigation, the board should find hat due publicity had been given to the fact f restoration, it might disregard the forms though adopted inadvertently) by which that ublicity was attained. *Opinion of March* 11, 874, 14 Op. 637.

194. *Semble* that notice of restoration of land o private entry, after having been once withdrawn therefrom, is not necessary (as assumed n the opinion of March 11, 1874) to enable he board of adjudication of suspended land ntries to take jurisdiction of a private entry on uch land and confirm it. *Opinion of April* , 1874, 14 Op. 646.

XII. Patent.

195. Persons having land allotted to them der resolve of Congress of 29th August, 1787, e not entitled to patents till provision is ade for issuing them. *Opinion of April* 29, 94, 1 Op. 45.

196. Patents, under act of June 9, 1794, ap. 62, for lands in Virginia, cannot be issued until the claimant shall have first complied with the laws of Virginia to which the act refers. *Opinion of Dec.* 21, 1797, 1 Op. 79.

197. A patent issued under a mistake, in consequence of a Virginia military land-warrant being located on lands which had been previously and regularly located by others, is null and void. *Opinion of June* 10, 1807, 1 Op. 159.

198. Where the identical land, by the same metes and bounds, has been previously granted according to law by the United States to other individuals, no subsequent act on the part of the United States can possibly affect the prior title to the premises derived from their own patent. *Ibid.*

199. Where the local law authorizes a transfer of the right to a patent at sheriff's sale, a patent may issue to the purchaser at such sale. *Opinion of Aug.* 15, 1816, 1 Op. 191.

200. The holder of an unpatented location cannot dispossess one holding under a patent from the United States by any common-law proceeding, but he may institute a proceeding in chancery for the purpose of rescinding a patent improperly granted. *Opinion of Aug.* 31, 1819, 1 Op. 300.

201. The general standard of remuneration, where title fails, is the purchase-money and interest, the improvements to be paid for by the successful party. *Ibid.*

202. By the act of March 1, 1800, chap. 13, the Secretary of the Treasury was required to number the 100-acre lots of the fifty quarter-townships progressively, and that the patent issued for each should *inter alia* give the number of the lot located. Such description cannot be departed from, for no form of description varying therefrom will pass the title of the United States; nor can any patent be issued until the lots shall have been numbered. "The system which has been adopted for the arrangement and appropriation of these lands is beautiful and perfect as it stands; no ministerial officer should be permitted to touch or alter it in any of its parts." *Opinion of Dec.* 15, 1819, 1 Op. 323.

203. Patents, under the act of 17th February, 1815, chap. 45, must issue to the owner at the date of the act, if alive, and if dead to the heirs or devisees. The act attaches no assignable quality to the charity which it bestows,

and being the only authority for issuing a patent, its terms must be strictly pursued. *Opinion of May* 11, 1820, 1 Op. 361.

204. Land patents issued by mistake for lands to which other persons have pre-emption rights may be returned and canceled, or repealed by *scire facias* or bill in chancery, at the instance of the United States, or of the pre-emptioners in the name of the United States. *Opinion of Jan.* 27, 1821, 1 Op. 458.

205. Land patents may, and ought to, be withheld where the confirmations have been obtained by fraud. If actually issued, the courts will cancel them. *Opinion of Nov.* 25, 1824, 1 Op. 699.

206. The issuing of a patent is not so purely a ministerial act as to follow a patent certificate as a matter of course. *Opinion of Oct.* 10, 1825, 2 Op. 15.

207. The relocation and survey having been made in the name of the original patentee, after the alleged transfer of his right to others, the patent must be issued granting lands to him, his heirs, &c., according to the suggestion in the fifth section of the act of the 10th of August, 1790, chap. 40. *Opinion of April* 10, 1826, 2 Op. 25.

208. A patent issued by mistake may be corrected before delivery. If delivered, and the patentee refuse to surrender it for cancellation, the President may issue a new one, reciting the error committed in the former as the cause. *Opinion of Nov.* 13, 1826, 2 Op. 41.

209. Where a patent was issued by mistake for a whole instead of a quarter section of land, and the patentee sold the same: *Advised* that the vendee be immediately notified of the mistake, and that both be made parties to a suit for the canceling of the patent. *Opinion of June* 7, 1827, 2 Op. 53.

210. Patents should not issue for lands inadvertently sold. *Opinion of Oct.* 22, 1828, 2 Op. 186.

211. Where application is to be made to the Supreme Court for redress, in a land-patent case, in the mean time it may be as well to suspend the patent. *Opinion of Oct.* 27, 1828, 2 Op. 187.

212. The Commissioner of the General Land Office is bound to issue the patent to the original beneficiary, his heirs or assigns, and must, therefore, have satisfactory evidence of assignment before he issues to assigns. *Opinion of Oct.* 13, 1829, 2 Op. 276.

213. Purchasers of lands reserved by the 2d and 3d articles of the Creek treaty of March 24, 1832, must have patents to complete their title. *Opinion of Feb.* 26, 1836, 3 Op. 40.

214. Patents must issue under the 14th and 19th articles of the Choctaw treaty of 1830 and the Chickasaw treaty of 1834, in order to divest the United States of title in the reservations. *Opinion of March* 19, 1836, 3 Op. 49.

215. Patents for reserves, under former treaties, may issue to Indian residents or assignees—under the latter only to the reservees. *Ibid.*

216. Patents are requisite to divest the title of the United States to the Ottawa, Chippewa, and Pottowatomie reserves, and should be so issued as to disclose the estate granted. *Opinion of March* 26, 1836, 3 Op. 55.

217. In cases of doubt, patents may be suspended until the question shall have been determined by a competent tribunal. *Opinion of April* 23, 1836, 3 Op. 102.

218. The terms employed in the patent to R. L. are not so vague as to render the patent void for uncertainty. In construing public grants, issued in great numbers by the officers of the Government, and in accordance with a certain formulary deliberately adopted by those officers, the courts may resort to contemporaneous documents on file in the proper department, for the purpose of ascertaining the intent of the grantors. *Opinion of May* 7, 1836, 3 Op. 111.

219. Certain lands having been actually *entered* under the pre-emption laws, pursuant to instructions sent to the register and receiver from the Treasury Department, the case is clearly brought within the terms of the second section of the act of July 2, 1836, chap. 266, and the patent should issue accordingly. *Opinion of July* 6, 1836, 3 Op. 139.

220. The recorder of the General Land Office only has power to attest and seal patents for public lands, the former law in this respect having been repealed by the act of July 4, 1836, chap. 352. *Opinion of July* 25, 1836, 3 Op. 140.

221. All patents emanating from the General Land Office, whether of land sold, or of lands in respect to which private claims are recognized by acts of Congress, must be certi-

fied or countersigned by the recorder. *Opinion of December* 23, 1836, 3 Op. 167.

222. The United States are bound by their treaty stipulations with France, and by the universal usage among civilized nations, to go on and perfect the title of the heirs of Thomas F. Reddick to a tract of land on the bank of the Mississippi, held under a Spanish grant, and relinquished by act of 1st July, 1836, chap. 250, unless the same shall be taken by an older and better claim not emanating from the United States; and no such title having been set up, a patent ought to issue to the said heirs. *Opinion of Jan.* 2, 1839, 3 Op. 398.

223. On completion of payment for Creek reserves conveyed by the reservees to other persons, certified by some person appointed by the President for that purpose, and approved by the President himself, patents must issue to the purchasers. *Opinion of Feb.* 7, 1839, 3 Op. 413.

224. It will not be a compliance with the treaty of 24th March, 1832, between the United States and the Creek tribe of Indians to issue patents in such cases, where the right is controverted, to the original reservees to abide the result of suits and to inure to the successful parties. *Ibid.*

225. Where an assignee in blank of the floating right of pre-emption to a specific quantity of land is in conflict with an assignee of the same right, which has been actually located, and the Commissioner of the General Land Office is satisfied that the assignment in blank is not clearly fraudulent, he ought to issue the patent to the original pre-emptor, leaving the conflicting claims to be settled by courts of justice. *Opinion of Dec.* 18, 1840, 3 Op. 608.

226. It is a sufficient compliance with the provisions of the act of July 4, 1836, chap. 352, for the engrossing clerks to write the name of the President to patents, and for the Secretary thereafter to attest them by his signature. *Opinion of Feb.* 27, 1841, 3 Op. 623.

227. All the duties respecting the execution of patents, except the attestation, are ministerial, and may be performed either by the clerks or by the Secretary. *Ibid.*

228. The counter signature of the recorder of land patents, and seal of the office thereto attached, constitute a sufficient authentication of a patent for land. *Opinion of April* 10, 1841, 3 Op. 630.

229. Patents for reserve lands under the Creek treaty of 1832 are to be issued to purchasers, owners, assignees, or transferees; and claimants must show themselves to be within the description of persons entitled, by exhibiting authentic evidence of the fact. *Opinion of July* 26, 1841, 3 Op. 644.

230. The Commissioner of the General Land Office properly refused to issue a patent for land entered by Governor Shannon, in Ohio, and withdrawn from private entry in order to provide for executing the grant by Congress, by act of 24th May, 1828, chap. 108, of lands to the State of Ohio, for the purpose of aiding that State to extend the Miami canal from Dayton to Lake Erie, because it did not appear whether or not the land for which the patent was claimed was situated within the limits of the reservations, and because, if it was, the requisite notice had not been given by the register and receiver, as provided for in the regulations concerning the public lands. *Opinion of Aug.* 4, 1841, 3 Op. 650.

231. The execution of a patent for land to a soldier in the war of 1812 by the Commissioner of the General Land Office passes the title, although the same had not been delivered to the patentee. *Opinion of Sept.* 7, 1841, 3 Op. 653.

232. It is a matter of discretion with the Department as to whom the patent should be delivered. *Ibid.*

233. On a certificate to A. and company, assigned by A. alone, a patent may issue to A.'s assignees; and his partners must seek relief, if they shall be entitled to any, in the courts. *Opinion of Oct.* 20, 1842, 4 Op. 96.

234. The proper mode of proceeding to vacate an erroneous land patent is by bill in equity: the regularity of proceeding by *scire facias* in this country is doubted. *Opinion of Nov.* 26, 1842, 4 Op. 120.

235. In England letters patent are of record on the law side of the chancery; wherefore there is a propriety there for a writ of *scire facias* to vacate a patent that does not exist in the United States. *Ibid.*

236. Patents erroneously issued, or rendered invalid by an act of Congress confirming adverse titles, must be canceled, or judicially

avoided, before another can be issued for the same land, even to confirmees. *Opinion of March* 15, 1843, 4 Op. 150.

237. After one patent has issued for lands, the executive department is *functus officio* in respect to such lands until its former act is judicially set aside. *Ibid.*

238. The issuing of new patents whilst others are outstanding will lead to infinite mischief and confusion, by the blending of executive and judicial functions in a manner unknown to the laws and the Constitution. *Ibid.*

239. A patent cannot issue to one of two purchasers of a quarter section of land, or for any unspecified portion of the same. Where such conditions exist as will permit a partition of the land held in common, a patent may be issued to the purchaser entitled after the division. *Opinion of April* 16, 1844, 4 Op. 319.

240. It is not competent or proper for the Commissioner of the General Land Office to make alterations in the dates of patents for lands, after the delivery thereof to the grantees. *Opinion of June* 8, 1844, 4 Op. 329.

241. Whether patents irregularly issued shall have effect from their date or time of delivery may be determined by parol testimony. *Ibid.*

242. Where, upon the application of a settler on public land in Iowa for a patent for his entered location, it was made to appear, that after having executed a deed of a portion of the land to another person, he made the affidavit required by law, that no person other than himself had any interest therein, and that he had made no contract, &c.; and that such grantee had obtained a patent for his land under the act of 4th September, 1841, chap. 16, and claimed to hold it, notwithstanding the settler's deed to him had been decreed by a court of chancery, having jurisdiction, to have been obtained by duress, and for such reason to be void: *Held*, that a second patent for the same land ought not to be issued whilst the first remains outstanding. *Opinion of April* 7, 1847, 4 Op. 558.

243. It is not the duty of the Government to institute proceedings to vacate the first patent, as it is in no wise responsible for the act which embarrassed the settler's pre-emption and caused the existing difficulty. *Ibid.*

244. The applicant should seek relief in the court of chancery, which has full jurisdiction of the case, and ample power to administer the remedy to which he shall be entitled. *Ibid.*

245. He may, however, be permitted to use the name of the United States in his proceedings, if the Secretary of the Treasury shall deem it discreet to authorize it. *Ibid.*

246. A patent may properly issue to pre-emptors, notwithstanding others to ordinary purchasers may have been issued for the same land, and remain outstanding. *Opinion of July* 29, 1848, 5 Op. 8.

247. A patent should issue to H. M. R. pursuant to a certificate issued to him on the 24th of November, 1818, and located on land at the Hot Springs in Arkansas; he being entitled thereto under the act of March 1, 1843, chap. 50. *Opinion of April* 29, 1850, *and May* 2, 1850, 5 Op. 236, 237.

248. A patent should issue to C. for land in fractional section No. 11, township 4, range 1, in the State of Ohio. *Opinion of Nov.* 29, 1851, 5 Op. 477.

249. It is proper to withhold patents for land in cases where the claim on which they are demanded, under final decrees of the United States courts, are identical with the title or claim now in controversy before the Supreme Court. *Opinion of Oct.* 30, 1852, 5 Op. 628.

250. Where a patent for public land has once issued, it cannot afterward be canceled or annulled by the mere act of the Department; the intervention of a court is necessary for that purpose. *Opinion of June* 20, 1871, 13 Op. 457.

251. A second patent should not issue for the same land so long as the prior patent remains unrevoked by a judicial tribunal. *Ibid.*

XIII. Statutory Grant.

252. An act of Congress confirming land titles of two or more individuals, or granting land, must be taken altogether; and if there be not land enough to answer all the grants, and there be a conflict of claims, it must be reconciled by reference to the report of the commissioners on which the act was founded; and if two parts of the same act cannot be reconciled, *semble* that the latter of the provisions must prevail. *Opinion of May* 28, 1842, 4 Op. 40.

253. A grant by Congress does of itself, *proprio vigore*, pass to the grantee all the estate of

he United States, except what is expressly xcepted. *Opinion of Nov.* 10, 1858, 9 Op. 254.

254. A grant of public land by statute is the ighest and strongest form of title known to ur law. It is stronger than a patent, which ay be annulled by the judiciary upon a roper case shown; whereas even Congress annot repeal a statutory grant. . *Opinion of May* 27, 1864, 11 Op. 47.

XIV. School Land Grants.

255. In a certain class of cases provided for n the act of May 20, 1826, chap. 83, where he sixteenth section has been interfered with y confirmed private claims and donations, sections of other lands may be made in lieu hereof by the Treasury Department under the rovisions of that act. *Opinion of April* 25, 844, 4 Op. 322.

256. The State of Minnesota, by the grant o her of sections 16 and 36 in every township f public lands in the State, acquired no title to ownship sections 16 and 36 within the Sioux alf-breed reservation, west of Lake Pepin, as gainst the holders of scrip issued to the half-breeds of the Sioux Nation in exchange for heir interest in the said reservation under the ct of July 17, 1854, chap. 83. *Opinion of July* 21, 1864, 11 Op. 59.

257. The Government, like an individual, has no power to withdraw or annul its grant of land. The first lawful grant must stand; and the second cannot operate as a conveyance, for the reason that the grantor, when he made it, had no estate to convey. *Ibid.*

XV. Swamp Land Grants.

258. Under the act of September 28, 1850, chap. 84, granting to the State of Arkansas all the swamp lands within her limits the title vested in the State before a patent issued. *Opinion of Nov.* 10, 1858, 9 Op. 254.

259. The general description of all swamp lands within the limits of the State was certain and definite enough for purposes of notice. *Ibid.*

260. Where Congress after the grant of September 28, 1850, made another grant to the State of Arkansas to aid in the construction of a railroad, under which a part of the lands previously granted under the denomination of swamp lands was included, it was held that the State took the lands under the first grant. *Ibid.*

261. The State of Iowa is entitled to the purchase-money of swamp lands within her limits, which were entered with cash prior to the passage of the act of March 3, 1857, chap. 117. *Opinion of April* 20, 1866, 11 Op. 467.

262. She is also entitled to indemnity in land for such swamp lands as were located with warrant or scrip prior to the passage of that act. *Ibid.*

XVI. Grants in Aid of Canals, Railroads, etc.

263. The State of Ohio having refused to obligate herself to complete the canal within a reasonable time or to construct it further than the avails of the lands proposed to be granted her by the United States will do so, and as the act of Congress did not authorize the grant upon such conditions, the executive department cannot properly make the transfer. *Opinion of Jan.* 26, 1833, 2 Op. 550.

264. If the General Government shall make the transfer after the manifesto of Ohio as to her obligations, it will have no right to call on her either to complete the contemplated work or to restore the money for which the lands may sell. *Ibid.*

265. The proposed extension of the canal from Lake Erie to the Wabash, from the mouth of the Tippecanoe to Terre Haute, is authorized by the act of Congress of March 2, 1827 chap. 56; and when the same shall have been agreed on and located, the additional lands provided by the act, so far as the United States are in a condition to provide them, may be legally claimed by the State of Indiana. *Opinion of Aug.* 14, 1838, 3 Op. 359.

266. But the Commissioner of the General Land Office, under the direction of the President, cannot make an additional selection from public lands beyond the limits of five sections in width on each side of the extended portion of the canal, in lieu of land which has been sold or otherwise disposed of within these limits, without the assent of Congress. *Ibid.*

267. Whatever might, under other circumstances, have been the effect of a non-compliance on the part of Indiana with the provisions of the second section of the act of 26th May, 1824, chap. 165, upon the right of the State to 90 feet of land on each side of the Wabash and

Erie Canal, the forfeiture has been waived by the passage of the acts of 2d March, 1827, chap. 56, 27th February, 1841, chap. 12, 3d March, 1845, chap. 42, and 9th May, 1848, chap. 36, recognizing the continuing efficacy of the original grant, and evincing the intent to waive every antecedent cause of forfeiture to which the act of 1824 may have been subject; so that the State of Indiana has a title to the 90 feet on each side of the said canal as absolute as she would have had in the contingency of a full performance. *Opinion of Nov.* 15, 1849, 5 Op. 179.

268. Such of the feeders of the said canal as are navigable, are to be regarded as constituent portions of the work contemplated in the acts of Congress, and are comprehended in the grants for its construction. *Ibid.*

269. The grant of alternate sections of land on Des Moines River to Iowa, by the act of 8th August, 1846, chap. 103, extends the entire length of the stream as well above as below Raccoon Fork. *Opinion of July* 19, 1850, 5 Op. 240.

270. The purpose of the grant was to improve the navigation of the said river from its mouth to the Raccoon Fork; but the grant itself is not limited to the section to be thus improved. *Ibid.*

271. The question of the extent of the grant was disposed of by a former Secretary of the Treasury while the Land Office belonged to his Department, and the subject is now *res judicata* and beyond the control of the Secretary of the Interior. *Ibid.*

272. The act of Congress of 8th August, 1846, chap. 103, granting to the Territory of Iowa, for the purpose of aiding to improve the navigation of the Des Moines River from its mouth to the Raccoon Fork, one equal moiety in alternate sections of the public lands, in a strip 5 miles in width on each side of said river, to be selected, &c., subject to the approval of the Secretary of the Treasury, did not include the land above Raccoon Fork. *Opinion of June* 30, 1851, 5 Op. 390.

273. The opinion of the Secretary of the Treasury on this subject, expressed on the 2d March, 1849, has no obligatory effect on the power of his successor to reject the selections made under it, in the event of a disagreement as to the proper construction of the act. *Ibid.*

274. A survey, by which the Chicago branch of the railroad from Chicago to Mobile was to diverge from the main track at a point not north of the parallel of thirty-nine and a half degrees north latitude, is in accordance with the act of 20th September, 1850, chap. 61. *Opinion of March* 10, 1852, 5 Op. 518.

275. The United States granted to Illinois by that act, in aid of the railroad from Chicago to Mobile, every alternate section of land designated by even numbers of six sections in width on each side of said road and branches; but the claim for six sections for every linear mile of the road and its branches, including all its sinuosities and deflections from a straight line, is not tenable. *Ibid.*

276. By the act of June 18, 1838, chap. 114, 138,996 acres of land were granted to Wisconsin in aid of a canal, on the condition that if it was not completed within ten years the State should be liable to the United States for all moneys received upon the sale of the land, at a rate not less than $2.50 per acre. After disposing of all but 13,564 acres, the canal was incomplete and its construction abandoned: *Held*, that for all the land so disposed of the State was responsible to the United States in money, which a deduction from the 500,000 acres granted by the eighth section of the act of September 4, 1841, chap. 16, could not offset. *Opinion of July* 24, 1852, 5 Op. 574.

277. The act of 20th September, 1850, chap. 61, granting the right of way and land to the States of Illinois, Mississippi, and Alabama, in aid of a railroad from Chicago to Mobile, does not grant a right of way through the States of Kentucky and Tennessee. *Opinion of Aug.* 7, 1852, 5 Op. 603.

278. No part of the sections within the Chickasaw country can be claimed by Mississippi under the grant, but an equivalent is allowable. *Ibid.*

279. Congress, by act of August 8, 1846, chap. 103, for the purpose of improving the navigation of the river Des Moines "from its mouth to the Raccoon Fork," granted to the Territory of Iowa alternate sections of land "in a strip 5 miles in width on each side of said river." As construed by the Government at the time and as accepted by the State of Iowa, this grant extended only to the Raccoon Fork. Subsequently to this, the Secretary for the time being (Walker) expressed an opinion that the grant extended up the river to its source; but

office the next day without this
ing yet received execution. The
Secretary (Ewing) entertained a
nion, and refused to approve selec-
he Fork. Reference being made to
r-General (Johnson) he expressed
the grant extended to the source
but the Secretary did not act on
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Attorney-General (Crittenden),
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the Secretary cannot lawfully ac-
quiesce in and abide by the rule of action of Secretary Stuart, unless that rule be also accepted by the State of Iowa; it no more binds one than the other; and, unless the State extinguish all claim to land above its north boundary, the Secretary is bound to refuse to permit selections above the Raccoon Fork. *Ibid.*

286. The grants of public lands to the State of Iowa for railroad purposes by the act of May 15, 1856, chap. 28, are conditional grants *in præsenti*, in the nature of a float, which do not attach to any particular parcel of the public lands until the necessary determinative lines of railroad shall have been definitely fixed. *Opinion of Dec.* 19, 1856, 8 Op. 244.

287. The grant of public land to the State of Michigan for the construction of a ship-canal around the Falls of Ste. Marie by the act of August 26, 1852, chap. 92, vested immediately, under condition, as a floating title; such title to acquire precision of locality by selections of the State, subject to the approval of the Secretary of the Interior. *Opinion of Dec.* 20, 1856, 8 Op. 247.

288. The title vests in virtue of the act; it not being a case in which the President is required, or has authority, to issue the ordinary letters patent. *Ibid.*

289. The grant of land to the Territory of Wisconsin by the act of August 8, 1846, chap. 170, was a conditional grant in fee, to take effect as a grant on the admission of Wisconsin into the Union and the acceptance of the same by the legislature of that State. *Opinion of Dec.* 22, 1856, 8 Op. 256.

290. That grant by its terms is of a quantity of land equal to one-half of three sections in width on each side of a line defined; and upon acceptance of the grant the State became tenant in common with the United States, with provision to effect partition through the means of selections by the State, approved by the United States. *Ibid.*

291. By surveying and marking on the ground the lines of proposed railroads those lines are definitely fixed so far as to give the State of Iowa, under the act of May 15, 1856, chap. 28, an equitable or inchoate title to the dependent land. *Opinion of Feb.* 16, 1857, 8 Op. 390.

292. The State may lose this inchoate title by change of the location of the railroad. *Ibid.*

293. The State perfects its inchoate title by filing the location plots in the Land Office. *Ibid.*

294. The act of February 9, 1853, chap. 59, granting certain lands to the States of Missouri and Arkansas for railroad purposes, vests in those States a fee-simple by force of the act itself and without a patent. *Opinion of June* 7, 1857, 9 Op. 41.

295. The act of August 3, 1854, chap. 201, has no application to the lands granted in this case. The definite location of the road will locate the grant, and then the title to each particular section will be as complete as if it had been granted by name, number, or section. *Ibid.*

296. By the act of August 8, 1846, chap. 103, granting to the Territory of Iowa land on each side of the Des Moines River, for the improvement of that river from its mouth to the Raccoon Fork, the Territory was entitled to land only along that part of the river which runs below the Raccoon Fork. *Opinion of Nov.* 22, 1858, 9 Op. 273.

297. All public, especially legislative, grants of property, money, or privilege are to be construed most strictly against the grantees. *Ibid.*

298. When the United States by a legislative grant, viz, by act of August 8, 1846, chap. 170, gives land for public purposes, all the title which the United States had at the time of the grant or may afterwards acquire vests in the grantee, unless the latter has done something in the mean time which estops him from claiming. *Opinion of June* 3, 1859, 9 Op. 346.

299. A State to which land is granted by act of Congress cannot accept the benefits of the grant and repudiate its restrictions. *Ibid.*

300. The Union Pacific Railroad Company, eastern division, cannot after the expiration of three years from the date of the act of July 1, 1862, chap. 120, abandon the original route from Fort Riley to the one hundredth meridian and claim the withdrawal from pre-emption entry and sale of lands within fifteen miles of a proposed new route designated on a map filed in the Department of the Interior. *Opinion of April* 16, 1866, 11 Op. 462.

301. Alternate sections of public lands, though unsurveyed, which fall within the operation of the act of March 3, 1863, chap. 98, entitled "An act for a grant of lands to the State of Kansas, in alternate sections, to aid in the construction of certain railroads and telegraphs in said State," may be withdrawn from pre-emption, homestead, and other disposal along the lines of the railroads thus aided, where the same are located through such unsurveyed lands. *Opinion of Feb.* 4, 1871, 13 Op. 378.

302. The grants made by the act of May 4, 1870, chap 69, to the Oregon Central Railroad Company cannot be transferred by that company to another company; the above-named company being alone within the contemplation of Congress in respect of the donations made and duties imposed by that act. *Opinion of Feb.* 20, 1871, 13 Op. 382.

303. The pendency before the proper tribunals of a private land claim in California, under the act of March 3, 1851, chap. 41, brings the land covered by the claim within the meaning of the term "reserved" in section 3 of the act of July 1, 1862, chap. 120, though the claim is ultimately decided to be invalid; and consequently such land is excepted from the grant contained in the latter act. *Opinion of March* 7, 1871, 13 Op. 387.

304. The railroad between the towns of McGregor and Colmar, in Iowa, formerly owned by the McGregor Western Railroad Company, and now forming a part of the line of the Milwaukee and Saint Paul Railway Company, is not a "land-grant" road. *Opinion of June* 14, 1871, 13 Op. 445.

305. By the seventh section of the act of September 20, 1850, chap. 61, granting public lands in aid of the construction of a railroad from Chicago to Mobile, such railroad became a public highway for the purposes mentioned in said section for its whole length, and not merely for that part of the road along which the granted lands were located. *Opinion of Nov.* 21, 1871, 13 Op. 536.

306. Consideration of the claims of the Sioux City and Saint Paul Railroad Company and the McGregor and Missouri River Railroad Company, respectively, to the odd-numbered sections of lands at the intersection of their projected roads, under the act of March 12, 1864, chap. 84, granting lands to the State of Iowa to aid in the construction of railways. *Opinion of Dec.* 26, 1872, 14 Op. 157.

307. It was not the design of that act to authorize the issue of patents for lands lying beyond the point to which either of the roads

mentioned, while in the process of construction, should by sections of ten consecutive miles be from time to time completed. *Ibid.*

308. Priority of construction, and not priority of location, gives priority of right under the act; and hence the lands in controversy should be patented for the use of that company which shall first construct its road to the point of intersection with the projected road of the other company, though the latter may have been first located. *Ibid.*

309. The Wisconsin Central Railroad Company is entitled, under the provisions of the act of May 5, 1864, chap. 80, and the joint resolution of June 21, 1866 [No. 53], to receive patents for the lands conterminous with each section of 20 miles of road north of Steven's Point, duly certified to be completed according to the requirements of said act, without reference to the commencement or construction of the road from Portage City to Steven's Point. *Opinion of April* 3, 1873, 14 Op. 203.

310. The rights derived by the South and North Alabama Railroad Company under the act of March 3, 1871, chap. 123, reviving the land-grant act of June 3, 1856, chap. 41, in favor of that company, are subject to all vested interests which had already intervened in favor of the Alabama and Chattanooga Railroad Company under the act of April 10, 1869, chap. 24, reviving the same land-grant act in favor of the latter company. *Opinion of Feb.* 7, 1874, 14 Op. 617.

311. Such a vested interest, at the date of the act of March 3, 1871, had already intervened in favor of the Alabama and Chattanooga Railroad Company as to the public lands lying at the point of intersection of the two roads, within the overlapping limits of the same; and hence these lands should (following the practice of the Interior Department in similar cases) be certified to the State in favor of the last-named company solely. *Ibid.*

312. *Semble*, however, that under neither of the acts mentioned, including also the act of August 3, 1854, chap. 201, is a certificate required. Review of the various land-grant acts with reference to the point just adverted to. *Ibid.*

313. The act of June 3, 1856, chap. 43, granting public land to the State of Wisconsin, to aid in the construction of a railroad "from Saint Croix river or lake to the west end of Lake Superior and to Bayfield," considered and construed. *Opinion of Aug.* 6, 1874, 14 Op. 431.

314. The provision in the fourth section, viz that if the road mentioned is not completed within ten years "no further sales shall be made, and the land unsold shall revert to the United States," contains two conditions—one affecting the *power to dispose* of the land by the State, and the other affecting the *title* of the State to the land. By the former, upon the happening of the contingency referred to (the non-completion of the road within the time limited), the authority of the State to dispose of the land is *ipso facto* determined. By the latter, upon the happening of the same contingency, all of the land *then remaining unsold* is to revert to the United States; but whether the title thereto is divested out of the State and revested in the United States immediately upon default in the condition, or whether some act on the part of the United States, showing an intention to take advantage of the default, is necessary first to be done in order to defeat the title of the State, *quære*. *Ibid.*

315. Authorities touching the operation and effect of conditions-subsequent in legislative grants, together with the doctrine of the common law respecting the operation and effect of such conditions generally, adverted to and commented on. *Ibid.*

316. Distinction drawn between a legislative grant upon condition-subsequent and a grant by an individual upon a similar condition, where the common law prevails: thus, in the latter case the condition cannot be made by the grantor to operate otherwise than in subordination to the rule of the common law; while in the former case it may be made to operate contrary to and irrespective of the common-law rule, if that should be thought expedient by the legislature. *Ibid.*

317. The following conclusions accordingly arrived at: 1. The operation of conditions-subsequent in Congressional land grants does not depend upon the rules of the common law applicable to such conditions, but upon the intention of Congress as gathered from the language of the grant itself. 2. Hence, whether the non-fulfillment of the condition in the Wisconsin land-grant act of June 3, 1856, *ipso facto* avoids the title of the State to the unsold lands

and revests them in the United States, or whether it merely renders such title voidable and liable to be defeated thereafter when the United States, by some act, manifest their desire to resume the lands, is purely a question of statutory interpretation. 3. Looking at the whole of that act, and taking into consideration the peculiar features of the grant contained therein, the particular provision in which the said condition is found may reasonably be construed to have the effect, *proprio vigore*, of avoiding the title of the State and of reuniting the unsold lands to the public domain of the United States immediately upon the non-fulfillment of the condition. 4. Yet, assuming (as is done here, for the purpose of this case) the correct construction of such provision to be that the lands do not, by the non-fulfillment of the condition, *ipso facto* revert to the United States, but that some action on the part of the latter showing an intention to take advantage of the default is necessary *besides* in order to revest the land therein, an act of the executive branch of the Government is sufficient for the accomplishment of that result. 5. Such act may consist simply in the promulgation of an order restoring the lands to settlement and to market, which order it is competent to the Secretary of the Interior to issue. *Ibid.*

318. The mortgage to Nathaniel Thayer and others, trustees, executed by the Missouri River, Fort Scott and Gulf Railroad Company (formerly the Kansas and Neosho Valley Railroad Company), on the 1st of January, 1869, to secure payment of bonds of the company to the amount of $5,000,000, is a lien upon the lands granted to the State of Kansas for the company by the act of July 25, 1866, chap. 241, so far as, and no farther than, those lands were patented to it at the date of the act of March 3, 1877, chap. 125. *Opinion of July* 1, 1878, 16 Op. 50.

319. The trustees in the mortgage, however, having instituted proceedings in the United States circuit court for Kansas against the said company, praying for the appointment of a receiver and the foreclosure of the mortgage, the court made a decree appointing a receiver, and also a further decree, by consent of both parties to the suit, authorizing the receiver to execute and deliver to the United States a quitclaim deed for the lands conveyed by said company to the United States under the requirements of the act of March 3, 1877, chap. 125, which deed, by the terms of the decree, should release said lands from the mortgage: *Held* that the quitclaim deed, when executed and delivered by the receiver, will effect a valid discharge of the lien upon the said lands created by the mortgage. *Ibid.*

320. The act of July 27, 1866, chap. 278, made a grant of lands to the Southern Pacific Railroad Company (of California), which would acquire precision only upon the location of the line of the road. But the line designated upon the map filed by the company in the Interior Department January 3, 1867, was a line which, at the time, it had no authority to adopt, although subsequently (by an act of the California legislature of April 4, 1870) such authority was obtained by it. Hence the grant did not, upon the filing of that map, become attached to any of the lands along the line designated thereon. *Opinion of July* 16, 1878, 16 Op. 80.

321. The company was subsequently authorized, by the resolution of June 28, 1870, to construct its road upon the line indicated by the map filed as aforesaid; and thus it was enabled to place the grant upon lands along the line so indicated. *Ibid.*

322. The withdrawals of lands along the line designated upon said map (by order of Secretary Browning, March 19, 1867, and August 20, 1868, and by order of Secretary Cox, December 15, 1868, and July 26, 1870) were made by competent authority, and the lands thereby put in a state of reservation, so that no legal rights therein could be acquired under the general land laws. *Ibid.*

323. But the resolution of June 28, 1870, expressly saves and reserves all the rights of actual settlers, together with the other conditions and restrictions provided for in the third section of the act of July 27, 1866, chap. 278. By this saving clause it was intended that actual settlers then upon the lands, in addition to those who were rightfully pre-emptors and homesteaders, should have their equitable rights respected, and be allowed, upon making proper proof of their actual settlement, to obtain title to their lands under the general land laws. *Ibid.*

324. The act of May 26, 1824, entitled "An act to authorize the State of Indiana to open a canal through the public lands to connect

ıavigation of the rivers Wabash and Miami ıke Erie," examined and considered with ence to the subject of whether there has ı a forfeiture of the right of way (includ-)0 feet on each side of the canal) granted ıe State of Indiana, by said act, and, if so, ther the United States can now assert any n to the lands covered by said right of . *Opinion of Jan.* 16, 1879, 16 Op. 251.

25. The provision in the first section of act, namely, that "ninety feet of land, on ı side of said canal shall be reserved from on the part of the United States, and the thereof forever be vested in the State afore- l, for a canal, and for no other purpose ıtever," is a grant not of the land within eet on each side of the canal, but of an ıment therein, which is restricted to a par- lar purpose, the fee remaining in the ted States. *Ibid.*

26. Where the legal subdivisions out of ch that estate was carved were sold or ıted by the Government, the purchaser or ıtee took the title thereto subject to the ıment, unless the 90 feet "on each side of canal" were excepted out of the patent. l.

27. *Semble* that in patenting these subdi- ons no such exception was made; and there- the United States no longer have any in- st in the lands subject to the easement; but n forfeiture of the easement the absolute perty in such lands would become vested in patentees. *Ibid.*

28. A forfeiture may be declared (either by icial proceedings authorized by law or by slative act) in case the lands have ceased ı be used and occupied for the purpose of structing and keeping in repair a canal, able for navigation;" but it can only be lared by or in behalf of the United States. gress may in such case declare the forfeit- , or direct that proper legal proceedings be ituted to the end of having it declared. l.

29. Patents may be issued to the State of ınesota, under the land-grant act of July 866, chap. 168, for lands opposite that part he railroad line from Houston, &c., to the stern boundary of the State which has been structed in ten-mile sections *since* February 1877 (the date at which, in the event the lroad was not completed, it was provided by section 4 of said act that the lands not patented should revert to the United States), no action, legislative or judicial, having been taken to re- vest the lands in the United States. *Opinion of Nov.* 29, 1879, 16 Op. 398.

330. The provision in that section, adverted to, is a condition subsequent, and does not work a forfeiture of the grant and revest the lands in the United States until proceedings, either legislative or judicial, are had to enforce it. *Ibid.*

331. A location of said railroad line was made in 1866, after the passage of said land-grant act, and maps thereof were transmitted by the governor to the Secretary of the Interior in December of that year. The act of the State legislature accepting the grant was not passed until February 25, 1867, and it required the line to be run to Fremont and thence to Jack- son, which involved a deviation from the loca- tion of 1866. The constructed road deviates from that location only to such extent as was necessary to conform to the requirement of the last-mentioned act. *Held*, (1) that the road cannot be regarded as having received an offi- cial definite location until after the act of ac- ceptance, which required a modification of the original location; (2) that the Secretary of the Interior should accept proof of the construction of the road *upon the line as modified in accord- ance with the act of acceptance. Ibid.*

332. By act of May 12, 1864, chap. 84, a grant of lands was made to the State of Iowa to aid in the "construction of a railroad from a point at or near the foot of Main street, South McGregor, in said State, in a westerly direction, by the most practicable route, on or near the forty-third parallel of north latitude, until it shall intersect the said road running from Sioux City to the Minnesota State line, in the county of O'Brien, in said State." Sub- sequently, in 1864, a map was filed in the Gen- eral Land Office designating the general route of the road from McGregor to a point in O'Brien County, so as to form a junction with the line of the proposed road from Sioux City to the Minnesota State line. In 1869 a partial change in the location of the road was made by di- rection of the Commissioner of the General Land Office, and the location thus made, from the point where it departed from the location of 1864 on to the western terminus, became the recognized line of the road by the Interior

Department west of that point, and the public lands along the same were accordingly withdrawn. The road, however, having since been constructed upon a line different from the line located in 1869, the question considered is, whether, assuming that the location of 1869 was the definite location of the line of the road, but that the road has been constructed upon a different line, the State is entitled to the benefit of the grant; and, if so, then whether, in adjusting the grant, the line of definite location is to be regarded, or the line upon which the road was actually constructed: *Held*, that, in contemplation of the statute, the road was to be constructed upon the line of definite location; that the effect of such location, when made, is to give precision to the grant, and to define the limits within which the lands granted could be at once ascertained by the public surveys; and that whatever adjustment of the grant is made must therefore be made according to the line of definite location of the road. Yet *held*, further, that if the road has not been constructed on the line of its definite location—and it is for the Secretary of the Interior to determine whether or not the road has been constructed on that line—the State is not entitled to the benefit of the grant, although the line of the constructed road would answer the terms of the grant had *it* been the line of definite location. *Opinion of Feb.* 2, 1880, 16 Op. 458.

333. Whether deflections from the line of definite location, made in the actual construction of the road, have identified it with a different line, or whether in its construction there has been substantial conformity to the line of definite location, is a matter for the Interior Department to determine. But *advised* that where the deflections are in their character immaterial—*e. g.*, if made for the purpose of avoiding engineering obstacles which could not otherwise be avoided without enormous expense, or of remedying defects in the original location—such deflections would not destroy the identity of the constructed road with the line of definite location. *Ibid.*

334. The grant to Minnesota made by the act of March 3, 1857, chap. 99, to aid in the construction of certain railroads, viz, of "every alternate section of land, designated by odd numbers, for six sections in width on each side of each of said roads and branches," was a grant of *particular* sections of land lying within prescribed lateral limits to the road, to each of which the grant attached (on the definite location of the road) by distinct terms of description. And the indemnity provision in the same grant, giving other lands (to be selected within fifteen miles from the line of the road) in lieu of such of the granted lands as should appear, when the road was definitely located, to be sold by the United States or to be pre-empted, was equally precise: *Held*, accordingly, that the grant made by said act of 1857 was not one of quantity as distinguished from a grant of specified lands in place, and that a claim thereunder for an amount of land equal to one-half of six sections in width on each side of the road, or for six sections of land for every linear mile of road, including all sinuosities and deflections from a straight line, would be inadmissible. *Opinion of June* 5, 1880, 16 Op. 504.

335. The act of March 3, 1865, chap. 165, which declares (section 1) that "the quantity of lands granted to the State of Minnesota" by the said act of 1857 "shall be increased to ten sections per mile for each of said railroads and branches, subject to any and all limitations contained in said act and subsequent acts," &c., in effect only extended the lateral limits of the grant as made by the act of 1857 from "six" sections in width to "ten" sections in width on each side of the several roads and branches. The amendment thus introduced by the act of 1865 did not alter the character of the previous grant; this remained thereafter what it was before, a grant of lands in place as distinguished from a grant of quantity. *Ibid.*

336. The act of July 27, 1866, chap. 278, provided (in section 3) "that there be, and hereby is, granted to the Atlantic and Pacific Railroad Company, &c., for the purpose of aiding in the construction of said railroad, &c., every alternate section of public land, not mineral, designated by odd numbers," to the amount of ten and twenty alternate sections per mile as therein set forth, "whenever, on the line thereof, the United States have full title, not reserved, sold, granted, &c., at the time the line of said road is designated by a plat thereof filed in" the General Land Office. Section 8 declared the grant to be "upon and subject to the following conditions, namely,

at the said company shall (*inter alia*) com-ete not less than 50 miles per year after the ond year (*i. e.*, from the date of the act), d shall construct, equip, furnish, and com-ete the main line of the whole road by July 1878"; and by section 9 the grant was de-red to be "upon the further condition that he said company make any breach of the ditions hereof, and allow the same to con-ue for upwards of one year, then, in such e, at any time hereafter, the United States y do any and all acts and things which may needful and necessary to insure a speedy npletion of said road." Section 4 provided at on completion of 25 consecutive miles of y portion of the road the President should point three commissioners to examine the ne, and upon their report, on oath, that the tion of 25 miles has been completed as re-ired by the act, patents for the granted lands nterminous therewith are to be issued. Prior 1871 the company constructed its road from ringfield, Mo., to the western boundary of at State; and this portion of the road was amined in conformity to section 4 of said t, and accepted, and patents for the conter-inous granted lands issued. A small por-ion of the road was also constructed in the In-ian Territory. But during the period from he year 1871 down to August, 1880, no part f the road was constructed. A section of 5 miles of the road west from Albuquerque, . Mex., having since been constructed, the mpany now makes application for the ap-intment of three commissioners to examine d report upon the same, under said sec-n 4. *Held*, (1) that the grant made by d act to the said company is a grant *in præ-ti* (which acquired precision when the plat the line of its road was filed as required by e statute); (2) that the conditions in section f the act are conditions subsequent, and at the grant has not been forfeited by the lure of the company to perform the same, any of them, no action to enforce a forfeit-e by reason of such default having been en by authority of Congress; (3) that the mpany has still a right to proceed with the nstruction of the road, and, until in some ay authorized by Congress advantage is taken the breach of the conditions, it is the duty the executive department of the Govern-ent to give the company the benefit of the grant; (4) that the application of the company for the appointment of commissioners to examine the section of road constructed west of Albuquerque should be granted, and, if the road shall be found to be completed in all respects as required by said act, it should be accepted, and patents for lands conterminous therewith be issued. *Opinion of Oct.* 26, 1880, 16 Op. 573.

XVII. Indemnity for Lost Granted Lands.

337. A survey of section 16, in fraud of the treaties with the Cherokees of 1817 and 1819, does not divest the title of the United States, and consequently does not give the State a right to select another section in lieu thereof. *Opinion of Aug.* 12, 1830, 2 Op. 360.

338. Where a part of section 16 is disposed of the State is not bound to select the residue, but may take an equivalent on other sections. The act of selection of a section in lieu of section 16 is that by which the tract becomes appropriated for school purposes. *Ibid.*

339. The indemnity lands in Ohio provided for by the act of June 30, 1834, chap. 137, to make up the full quantity of lands previously granted for the construction of a canal from Lake Erie to the Wabash, where such granted lands were sold or otherwise disposed of by the Government, must be selected from the alternate sections reserved to the United States, or from other lands in the neighborhood near to the canal. *Opinion of June* 26, 1840, 3 Op. 553.

340. Those parts of sections which are cut by the parallel line five miles distant from the canal may be located; and quantities equal to the computed area of the cut sections may be located according to any of the usually recognized minor subdivisions of a section among the alternate sections accruing to the State along the exterior limits of the belt. *Ibid.*

341. If obstacles shall be found to exist to the location of sufficient land on the exterior limits of the belt in minor divisions the complement may be made up from full alternate sections. *Ibid.*

342. The Secretary of the Interior has no power, under the act of July 12, 1862, chap. 161, to set apart to the State of Iowa, from the public lands within her limits, an amount

equal to so much of the alternate sections of public lands, in a strip 5 miles wide on each side of the Des Moines River, between its mouth and the Raccoon Fork, as was sold or disposed of by the United States at the date of the act of August 8, 1846, chap. 103. *Opinion of April* 6, 1866, 11 Op. 453.

343. The Commissioner of the General Land Office is authorized to receive proofs of the swampy character of lands disposed of by the United States between March 2, 1855, and March 3, 1857, with a view to allowing the States the indemnity provided by the act of March 3, 1857, chap. 117, notwithstanding the omission in the Revised Statutes (section 2484) of that part of the act which granted the indemnity. *Opinion of July* 25, 1877, 15 Op. 340.

344. The right to indemnity, under that act, for swamp lands thus disposed of, is a right that "accrued" to those States in which such lands are situated prior to the adoption of the Revised Statutes, and is saved by section 5597 Rev. Stat. from being affected by the repeal of the omitted indemnity provision under the operation of section 5596 Rev. Stat. *Ibid.*

345. The words "reserved for public uses," as employed in section 7 of the act of March 3, 1853, chap. 145, and section 6 of the act of July 23, 1866, chap. 219, were not meant to apply to lands which passed to the State of California under the swamp-land act of September 28, 1850. That State is not entitled to indemnity under those enactments for school sections falling within the swamp-land grant. *Opinion of March* 4, 1878, 15 Op. 454.

346. The words "or otherwise defective or invalid," as used in the second section of the act of March 1, 1877, chap. 81, relating to indemnity school selections in the State of California, refer to indemnity selections which are invalid or defective for some other reason than that the lands in lieu of which they were made are not included within the final survey of a Mexican grant. Thus, where a selection made by the State was of land then in reserve, and the selection was for that reason defective or invalid, the words quoted above apply to this case, and such selection is confirmed by said act to the State. *Opinion of July* 12, 1878, 16 Op. 69.

347. Where there was no sixteenth or thirty-sixth section, in lieu of which an indemnity selection has been made, no title to the land embraced by such selection passes to the State. *Ibid.*

348. *Semble* that where two or more indemnity selections have been made in lieu of the same sixteenth or thirty-sixth section, the State is entitled to but one of the indemnity selections; there being nothing in the act of March 1, 1877, from which it can be fairly inferred that double selections were meant to be ratified, and that the State should thus obtain a greater quantity of land than had originally been allowed by law for school purposes. *Ibid.*

349. By article 2 of the treaty of December 29, 1835, with the Cherokee tribe of Indians, certain lands, now situate within the boundaries of the State of Kansas, estimated to contain 800,000 acres, were sold and conveyed to said tribe in consideration of $500,000. Subsequently, by the treaty of July 19, 1866, with said tribe, the same lands (known as the "Cherokee neutral lands") were ceded to the United States in trust, to be sold for the benefit of said Indians, and in accordance with that treaty and the supplemental treaty of April 27, 1868, were surveyed and subdivided as are the public lands, and sold, and the proceeds placed to the credit of said Indians. *Held*, (1) that under the sale and conveyance by the treaty of 1835 the Cherokee tribe of Indians acquired a title in fee-simple to the said lands, which thereupon ceased to be public lands of the United States; nor did they afterwards become public lands by reason of their cession to the United States by the treaty of July 19, 1866; (2) that neither section 34 of the act of May 30, 1854, chap. 59 (which *reserved* for school purposes the sixteenth and thirty-sixth sections in each township of public lands in the Territory of Kansas, when the same were surveyed preparatory to bringing them into market), nor section 3 of the act of January 29, 1861, chap. 20 (which *granted* to the State of Kansas "sections numbered 16 and 36 in every township of public lands in said State" for the use of schools, and provided for indemnity "where either of said sections, or any part thereof, has been sold or otherwise disposed of"), could have any effect upon the said lands of the Cherokees; (3) that the State of Kansas is not entitled, under the provisions of the school-land grant contained in the act of January 29, 1861, to indemnity for the sixteenth and thirty-sixth sections falling

within townships into which the said lands of the Cherokees were subdivided and sold as aforesaid. *Opinion of Jan.* 21, 1880, 16 Op. 432.

350. The United States, by treaty with the Delaware Indians dated September 24, 1829, granted to that tribe certain lands lying in the fork of the Kansas and Missouri Rivers, and now within the boundaries of the State of Kansas, for their permanent residence, pledging "the faith of the Government to guarantee to the said Delaware Nation forever the quiet and peaceable possession and undisturbed enjoyment of the same against the claims and assaults of all and every other people whatever." By a subsequent treaty, which took effect July 17, 1854, the same tribe ceded to the United States all of said lands (excepting a certain part theretofore sold to the Wyandots, and also excepting a certain other part specifically described) to be surveyed and sold, the proceeds, after deducting cost of surveying, &c., to go to the tribe. The lands thus ceded were surveyed, and were principally sold during the year 1856; and afterwards, under the provisions of a treaty with the Delawares, dated May 30, 1860, a portion of the tract excepted from the cession of July 17, 1854, and retained by the Delawares, was sold to the Leavenworth, Pawnee and Western Railroad Company. The whole of the lands sold under the treaties of 1854 and 1860 contained upwards of thirty townships: *Held*, (1) that the grant to the Delawares, by the treaty of 1829, conveyed only a right of occupancy (*i. e.*, the ordinary Indian title), the fee remaining in the United States—the lands thus continuing to be public domain, but subject to the Indian title; (2) that the lands covered by that grant came within the scope of section 34 of the act of May 30, 1854, chap. 59, though its operation upon them was liable to be indefinitely postponed by reason of the existence of the Indian title, or to be prevented by measures necessary to be taken in order to extinguish the Indian title; (3) that section 3 of the act of January 29, 1861, chap. 20, should be construed in connection with section 34 of the act of 1854, both sections being *in pari materia*, and that when thus construed it must be deemed that the grant to the State for school purposes made by said section 3 was meant to be as broad as the reservation for the same purposes contained in said section 34; (4) that, therefore, the indemnity provision in the *grant* applies to such sixteenth and thirty-sixth sections as constituted a part of the public domain at the date of the *reservation* and were within its scope; and hence it is applicable to sections 16 and 36 in those townships within the lands of the Delawares which were disposed of under the provisions of the before-mentioned treaties of 1854 and 1860; (5) that the State of Kansas is accordingly entitled to indemnity for the sixteenth and thirty-sixth sections within the townships last mentioned. *Ibid.*

351. By a treaty with the Kickapoo Indians, dated October 24, 1832, certain lands, now within the boundaries of the State of Kansas, were set apart as a permanent place of residence for that tribe. By a subsequent treaty with the same Indians, dated May 18, 1854, those lands were ceded to the United States, saving 150,000 acres thereof, which were reserved for a future home for the tribe, and which were afterwards set off by proper metes and bounds. A part of this diminished reservation was, under the provisions of a later treaty with the same Indians, dated June 28, 1862, allotted to individual members of the tribe, and the remainder sold to the Atchison and Pike's Peak Railroad Company for the benent of the tribe. The question being whether the State of Kansas is entitled, under the school-land grant in section 3 of the act of January 29, 1861, chap. 20, to indemnity for sections 16 and 36 within the diminished reservation thus disposed of, or to such sections in place: *Held*, (1) that the title of the Kickapoos to the lands within that reservation, when said act of 1861 was passed, was one of occupancy only (the ordinary Indian title), and the effect of the act was to grant to the State sections 16 and 36 in the reservation subject to that title; but this grant was also subject to certain rights reserved to the United States in the *proviso* to the first section of that act, by which the Government was authorized to make, and subsequently did make, other disposition of the lands by treaty; (2) that when such other disposition was made under the treaty of 1862, a case arose which is provided for in the said act of 1861, namely, of lands that have "otherwise been disposed of" by the United States, and which entitled the State to indemnity there-

under; (3) that, therefore, if the sixteenth and thirty-sixth sections within the diminished reservation of the Kickapoos are not now to be found in place, by reason of the disposition of them made as aforesaid under the treaty of 1862, the State of Kansas is entitled to indemnity therefor. *Ibid.*

352. Under the provisions of the acts of March 3, 1857, chap. 99, and March 3, 1865, chap. 105, the State of Minnesota is entitled to indemnity for lands lying within the limits of the grant (*i. e.*, within 10 miles from the line of definite location of the road) which it shall have lost by reason of the fact that such lands were sold by the United States or were pre-empted, whether the sale took place or the right of the pre-emptor attached before or after the date of the grant, provided the indemnity lands can be found within the proper indemnity limits (viz, within 20 miles from the line of the road). *Opinion of June* 5, 1880, 16 Op. 504.

353. But those provisions do not entitle the State to indemnity for lands which were never included within its grant, such as lands reserved to the United States by any act of Congress, or in other manner by competent authority, and excepted out of the grant. The indemnity is limited strictly by the sections lost in place, *i. e.*, sections which came within the terms of the grant, but which were previously, or have been subsequently, sold by the United States or pre-empted. It is not made in order that the State shall have necessarily a hundred sections of land for each 10 miles in length of constructed road, but in order to make the grant good. *Ibid.*

354. Accordingly, if there were reservations to the United States within the limits of the grant, or if the State were not entitled to one hundred sections of land within these limits for any 10-mile division of constructed road in consequence of the curvatures or sinuosities of the road in such division, no right would exist for a deficiency thus arising. *Ibid.*

XVIII. State Selections under Grants thereto.

355. Where a part of section 16 is disposed of the State is not bound to select the residue, but may take an equivalent on other sections (under Cherokee treaties, July, 1817, and February, 1819). The act of selection of a section in lieu of section 16 is that by which the tract becomes appropriated for school purposes. *Opinion of Aug.* 12, 1830, 2 Op. 360.

356. A valid pre-emption, under act of May 29, 1830, chap. 208, however, cannot be avoided by the selection. *Ibid.*

357. A quarter section is 160 acres; less than that the governor of Arkansas cannot select under the act granting land to the State. *Opinion of Aug.* 30, 1833, 2 Op. 578.

358. The States to which 500,000 acres of land were given for internal improvements are not entitled to take any land to which pre-emption rights exist. *Opinion of July* 11, 1842, 4 Op. 71.

359. Under an act of Congress (the act of May 20, 1826, chap. 90), granting to the State of Michigan a certain number of sections of land for the use of a university therein, the State selected, applied for, and received the requisite number of sections, some of the sections, thus deliberately selected, being fractional sections: *Held*, that the State cannot revise its selections, and obtain additional lands to make the sum total of acres what it would have been if all the selections had been complete sections. *Opinion of Sept.* 15, 1854, 6 Op. 725.

360. Conflicting claims to a particular section of the public lands arising between the State of Michigan, in virtue of selection made by it under the act of Aug. 20, 1852, chap. 92, and the alleged entry of a private purchaser in the forms of the general law is not a case of conflicting entries, such as the act of 1820 provides for, and requiring to be solved by offering the disputed tract at public auction. *Opinion of Dec.* 20, 1856, 8 Op. 247.

361. Such selections by the State, in a particular land district, do not require to be made during the time when the public lands of that district are withdrawn from private entry by proclamation of the President. *Ibid.*

362. The State of Wisconsin having selected the odd sections, under the grant made by the act of Aug. 8, 1846, chap. 170, and that selection having been approved by the United States, the State acquired a vested interest in such odd sections, notwithstanding that the lands had not yet been surveyed, and continued for some time afterward in the aborigi-

nal occupancy of the Menomonee Indians. *Opinion of Dec.* 22, 1856, 8 Op. 256.

363. Selections of the public lands, made by the State of California under the twelfth section of the act of March 3, 1853, chap. 145, required the approval of the Secretary of the Interior before title passed from the United States to the State by the grant therein contained. *Opinion of June* 7, 1872, 14 Op. 50.

364. Under the act of July 23, 1866, chap. 219, selections theretofore made by the State, and disposed of in good faith under the laws of the State, are not confirmed, nor does the title pass until the lands are certified over to the State by the Commissioner of the General Land Office. *Ibid.*

365. Hence, where the President in 1866 and 1867 reserved for light-house purposes a piece of land in California which had previously been selected by the authorities of that State under the twelfth section of the act of March 3, 1853, and by them granted to a private party in accordance with the laws of the State, but the selection has never received the approval of the Secretary of the Interior, nor has the land ever been certified over to the State by the Commissioner of the General Land Office: *Held*, that the legal title to the premises is still in the United States. *Ibid.*

366. Under the Michigan land-grant act of July 3, 1866, chap. 161, in aid of the construction of a ship-canal at Portage Lake, &c., the lands to be selected by the State are not required to be those "nearest" the contemplated line of that improvement, as in the prior land grant made to the same State by the act of March 3, 1865, chap 102. *Opinion of March* 11, 1874, 14 Op. 637.

367. The right of selection under the former act being only a "float," it could not be *adverse* to the right of any one who, while it remained in that condition, had acquired a legal or equitable right to any specific tract subject, in a general way, to such float. *Ibid.*

368. Reconsideration of the subject of the Portage land grant, heretofore examined in opinion of March 11, 1874 (see *ante* p. 637) upon an amended statement of facts, and questions thereon, subsequently submitted to the Attorney-General. *Opinion of April* 4, 1874, 14 Op. 646.

369. View expressed in that opinion that the lands to be selected by the State of Michigan under the act of July 3, 1866, chap. 161, are not required to be those "nearest" the contemplated line of improvement, reaffirmed. *Ibid.*

370. Selections of lands by the State under that act are subject to the approval of the Secretary of the Interior. *Ibid.*

371. Authority of the Secretary to reject certain selections of the State, and reinstate certain entries of the same lands previously made by private parties, considered. *Ibid.*

XIX. Salt Springs.

372. The grant of salt springs contained in the act of April 18, 1818, chap. 67, admitting Illinois into the Union, includes all salt springs, discovered and undiscovered, to which the President of the United States has thought, or shall think, it necessary to annex lands for the purpose of working them, and no other. *Opinion of Dec.* 28, 1820, 1 Op. 420.

373. The discretion previously exercised by the President in declining to withhold from ale such springs as were supposed to be of little value, is neither impaired nor taken away by the act admitting Illinois into the Union. *Ibid.*

374. The effect of the grant is merely to place the State of Illinois, in regard to these springs and reservations of land, exactly on the ground which had been previously occupied by the United States. *Ibid.*

XX. Mineral Lands.

375. The President has unrestricted power to lease the lead mines, on such conditions as he may think proper, for any term not exceeding three years, provided the leases be not inconsistent with existing laws. *Opinion of June* —, 1822, 1 Op. 593.

376. There is no material difference between the two acts concerning the lead mines (viz, the act of March 3, 1807, chap. 46, and the act of March 3, 1807, chap. 49), only that leases under the one are limited to three, and under the other to five years. *Opinion of April* 3, 1835, 2 Op. 708.

377. The power to lease the mines necessarily includes the power to collect rents, and to take all proper measures to effect that object. *Ibid.*

378. The President has the power to reserve from public sale any or all of certain mineral

lands in Wisconsin, and may, if he deem it advisable, lease them. *Opinion of July* 21, 1837, 3 Op. 277.

379. Where, from want of proper and necessary information, he shall have failed to make the necessary reservation prior to the public sale, it is competent for him then to direct the reservation. *Ibid.*

380. The several acts of Congress relating to the saline and mineral lands confer a general authority upon the President to lease the lead mines. *Opinion of Oct.* 14, 1842, 4 Op. 93.

381. The President has no authority, under the Constitution, to dispose of, by lease or otherwise, any portion of the public lands without authority of law; and the authority to lease mineral lands is limited by law to salt springs and lead mines, and the necessary contiguous sections. *Opinion of April* 18, 1846, 4 Op. 480.

382. Wherefore the President is without authority to lease, or cause to be leased, lands which contain mines of copper or silver as the predominating mineral. *Ibid.*

383. Whether or not certain locations made under permits given by the superintendent of mineral lands, and the expenditure of moneys there, entitle claimants to leases, if there were authority to execute tnem, *quœre*. *Ibid.*

384. The practice of leasing salines and lead mines has so long prevailed, under a construction of the laws which has received a very general assent, that the Executive would not now be justified in declining to exercise the power, and thus deprive the Treasury of the revenues to be derived from the mining operations notoriously going on at the lead mines in Iowa. *Opinion of July* 7, 1846, 4 Op. 499.

385. Lands containing iron ore merely are not to be considered as "mineral lands" within the meaning of the act of 1st March, 1847, chap. 32, but they are to be disposed of according to the laws in relation to the disposition of other public lands. *Opinion of Aug.* 28, 1850, 5 Op. 247.

386. Mines of the precious metals belong to the eminent domain of the political sovereignty, as well by the laws of Spain as by the common law of England and the public law of the United States. *Opinion of Feb.* 14, 1856, 7 Op. 636.

387. The terms "valuable mineral deposits," used in the act of May 10, 1872, chap. 152, to promote the development of the mining resources of the United States, include diamonds; and the title to public lands containing these minerals may, accordingly, be acquired by individuals or associations under the provisions of that act. *Opinion of Aug.* 31, 1872, 14 Op. 115.

388. Four persons, citizens of the United States, located 1,000 feet on the Red Pine Lode, in Utah Territory, in July, 1871. One of them, in July, 1872, assigned to S., an alien, 400 feet of the same mine. In January, 1874, S. assigned the said 400 feet to D., a citizen of the United States, who has obtained the remainder of the 1,000 feet by proper assignments. Application is made by D. for a patent for the whole thousand feet: *Held*, that D., by reason of the alienage of S., derived no right through him to a patent for the 400 feet referred to, and that he is entitled to a patent for only the 600 feet obtained from the other assignors. *Opinion of Aug.* 6, 1875, 15 Op. 29.

389. The Secretary of the Interior, by a decision dated August 4, 1871, rejected an application of the New Idria Mining Company, made under the act of July 26, 1866, chap. 262, for a patent of certain mineral lands in California. Subsequently the company filed an application for a rehearing, accompanied by affidavits obtained for the purpose of curing defects in the original application. The application for rehearing was denied by the Secretary April 27, 1872, but was reinstated by him June 15, 1872, since which time no action has been taken thereon. On March 3, 1875, Congress passed an act (chap. 130) requiring the Secretary of the Interior to furnish to that body at the beginning of its next session certain information respecting the lands in question, in compliance with which the Secretary made a report to Congress December 8, 1876; but thus far Congress has not acted further in the matter. In the mean time an ejectment suit, brought against the company by an adverse claimant of said lands, has been brought before the Supreme Court of the United States on a writ of error, and is still pending there. The company now ask that their case be taken up and reviewed upon the proofs originally made, the affidavits filed with the application for a rehearing, and the provisions of the act of May 10, 1872, chap. 152: *Held*, (1) that the application for rehearing is fairly before the Depart-

ment and can properly be considered; (2) that the action of Congress (in 1875) presents no obstacle to a determination of the matter of the application; (3) that the applicants are entitled to have their case adjudicated upon the law as it exists, and that, so far as any anticipated legislation is concerned, it is the duty of the Secretary of the Interior now to proceed with all reasonable expedition and determine the case: But *held*, further, that in view of the bearing which a decision in the case pending before the Supreme Court may have upon the matter, and also of other circumstances, the Secretary may, if he thinks justice requires it, properly delay his determination until that decision is rendered. *Opinion of Nov.* 12, 1877, 15 Op. 389.

XXI. Reservations for Public Use.—Sale of Military Sites.

390. The act of 3d March, 1819, chap. 88, extends only to such military sites as belonged to the United States at its date; and such sites when they have, or whenever they may, become useless for military purposes may be sold under said act, whether situated in a State or Territory. *Opinion of May* 6, 1836, 3 Op. 108.

391. Decision as to the quantity of land to be reserved for public use, and the places where to be located, rests in the discretion of the President, subject to such regulations as may, from time to time, be provided by law, either as to the particular public use, the quantity, or the subsequent disposal thereof for private use. *Opinion of Oct.* 15, 1853, 6 Op. 157.

392. At present the statute limitation in Oregon Territory (see act of February 14, 1853, chap. 69) as to quantity is not exceeding six hundred and forty acres for forts, and twenty acres for any other public use. Subject to this condition, the military reservation of Fort Vancouver, in the Territory of Oregon, is valid, notwithstanding any pre-existing donation claim of an inhabitant of the Territory, and notwithstanding the provisional government of Oregon had located the county seat of justice at Fort Vancouver. *Ibid.*

393. Where the President, in 1854, directed that a tract of land in California be reserved for light-house purposes and there was a subsequent judicial confirmation of a claim to this tract under a grant from Mexico, and the United States, in 1860, issued a patent to the grantee in pursuance of this confirmation, which patent did not mention the fact of the existence of this reservation: *Held*, that the patentees were entitled to the possession of the land as against the United States. *Opinion of April* 3, 1868, 12 Op. 379.

XXII. Claims under Indian Treaties.

394. A negro cannot take a reservation under the Cherokee treaties of July, 1817, and February, 1819, although the husband of an Indian woman. *Opinion of Aug.* 12, 1830, 2 Op. 360.

395. The reservation, under the Choctaw treaty of 1830, of "sections" refers to quantity; but that is to be taken and patented in reference to the established system of our land surveys, in parallelograms of fixed extent and uniform character. *Opinion of May* 31, 1842, 4 Op. 45.

396. By the Choctaw treaty of Dancing Rabbit Creek, of 1830, if any portion of a section on which a claimant under the fourteenth article of said treaty resided at the date thereof had been sold by the United States prior to the passage of the act of Aug. 23, 1842, chap. 187, the commissioners were not authorized to award to said claimant scrip instead of land, unless it was then impossible to give to said claimant the quantity of land to which he was entitled, including his improvements, or any part thereof, on the adjoining lands. *Opinion of Oct.* 21, 1844, 4 Op. 344.

397. If two or more claimants under the fourteenth article resided, at the date of the treaty, upon the same section, and a portion of it had been sold by the Government, there existed no authority to issue scrip, unless it were impossible to give them the quantity of land to which they were entitled, including their improvements, or any part thereof, agreeably to the terms of the third section of the act of 1842, on adjoining lands. *Ibid.*

398. A claimant who, having complied with the fourteenth article, has been expelled from or induced to leave his land by the fraud of the Government agents, and kept out of possession by a sale thereof by the Government, has not forfeited his rights. *Ibid.*

399. If two grants have been made for the

same land to the same claimant, under two separate articles—one for six hundred and forty acres, upon conditions with which he complied, and another for three hundred and twenty acres—his acceptance of the larger grant, if prior in point of time, will render the smaller grant unavailing; and where the smaller was made first the larger will be available only for the excess. *Ibid.*

400. Locations under the nineteenth article, before the passage of the act of 1842, worked a forfeiture under the fourteenth article in certain cases. *Ibid.*

401. All assignments, or agreements to assign claims, under the Choctaw treaty of Dancing Rabbit Creek, of 1830, previous to the expiration of five years from the ratification thereof, are causes of forfeiture, without reference to the consideration upon which they may be founded; and these matters are specially cognizable by the commissioners, whose judgment respecting such assignments is conclusive. *Opinion of Oct.* 28, 1844, 4 Op. 346.

402. Where an Indian reservee under the second article of the treaty of March 24, 1832, contracted to sell his reservation to A, who paid therefor $100, and then permitted B to go into possession thereof; and A afterwards died, and B, offering to pay the balance of the valuation of the land, claims a patent: *Held*, that B may be regarded as the last *bona fide* transferee within the act of July 5, 1838, chap. 161, and that a patent be issued to him on payment by him of the balance of the purchase-money. *Opinion of April* 25, 1846, 4 Op. 491.

XXIII. Private Land Claims in California.

403. The commissioners for the adjudication of private land claims in California are a quasi court. *Opinion of June* 30, 1855, 7 Op. 304.

404. No patent can be issued by the Commissioner of Public Lands to any private land claimant in the State of California until after final decree in the case. *Opinion of Sept.* 18, 1855, 7 Op. 491.

405. Patents, granted by the United States for lands confirmed by the commissioner to adjudicate private land claims in California, do not confer title save as against the United States. The legal effect of confirmation dates back to the time of the cession of California to the United States, and decides that the land confirmed was not public domain at that time. The rights or claims of third parties remain to be determined by the proper courts. *Opinion of Feb.* 14, 1856, 7 Op. 636.

406. Such patents do not carry, nor do they reserve, any right as to mines, all which remains to be determined by the laws of California. *Ibid.*

407. Where lands are confirmed by the commissioner described as being "comprehended between" certain limits, but confirmed "to the extent and quantity of four square leagues and for no more; provided that so much be contained within the boundaries called for by the grant": *Held*, that the patent cannot issue for more than four square leagues of land, whatever may be the quantity within the bounds designated. *Opinion of April* 24, 1856. 7 Op. 681.

408. The adoption of special measures to defend the title of the Government to certain lands in California, awarded by the commissioners to one Limantour, recommended. *Report to President May* 24, 1856, 8 Op. 474.

409. Conclusion and legal effect of the revision of private land claims in California by the Attorney-General. *Report to President March* 4, 1857, 8 Op. 515.

410. A claimant for land in California under a Mexican title, is entitled under the thirteenth section of the act of March 3, 1851, chap. 41, to a patent upon showing that his claim has been finally confirmed and the survey of it approved by the surveyor-general. *Opinion of Sept.* 29, 1857, 9 Op. 108.

411. Neither the decree of the court nor the survey nor the patent is conclusive upon anybody but the Government and the patentee. *Ibid.*

412. Third parties have their remedy by injunction in the Federal courts and by action in the State courts. *Ibid.*

413. The Attorney-General has no right to interfere except in the judicial investigation between the claimants and the Government. *Ibid.*

414. In the case of a private land claim in California based on an alleged grant from Mexico the counsel for the United States should not be directed by the President to consent to the admission of evidence which they believe to be corrupt and false. *Opinion of March* 28, 1859, 9 Op. 321.

415. If there are original documents in the archives of the Mexican Government which tend to support the case of the claimant the President should not solicit that government to furnish them, but the Government of the United States should wait until that of Mexico shall make a voluntary tender of the documents, and then examine into their character with great care, holding Mexico responsible for any aid she may willfully give in support of a false claim against the United States. *Ibid.*

416. The declaration contained in the tenth article of the treaty with Mexico, that no grant whatever of land in California had been made by the Mexican Government after May 13, 1846, although the same was eliminated by the Senate and also the terms of the protocol, signed by the commissioners on the exchange of ratifications on May 26, 1848, constituted a solemn and impressive averment by the Mexican Government that no grant whatever of lands in the Territory of California had been made after 13th of May, 1846; and the United States cannot with propriety ask the Republic of Mexico to assert the validity of a grant alleged to have been made subsequently to that date. *Ibid.*

417. The Mexican claimant was bound by the affirmation made by his government, and should look to it and not to the United States for redress for the injury, if any, which was inflicted. *Ibid.*

418. The affirmation thus made by the Mexican Government is overwhelming evidence that no grant purporting to have been made subsequently to the 13th of May, 1846, was in existence among the Mexican archives at the date of the treaty. *Ibid.*

419. Although the existence of papers in certain offices of the Mexican Government supporting such an alleged grant may have been established by the certificate of American officials, and their genuine character proved by the oaths of Mexican witnesses, the experience of the Government in similar cases show that the claim may be wholly false. *Ibid.*

420. The United States should not permit the confirmation of a spurious claim to a mine in California, even though it should be made to appear that the price of the product of the mine has risen and may continue to rise in the market in consequence of the restriction of the privileges of claimants. The cause should be determined by the rules of law and not by the principles of political economy. *Ibid.*

421. Where two grants of land in California lay afoul of one another, the claimant who has the prior grant, and obtained the first judicial confirmation, has a title better in law and equity than the other. *Opinion of Nov.* 9, 1859, 9 Op. 397.

422. In such a case the surveyor-general of California should locate the whole of the senior grant as it would have been located if no opposing claim to the land existed. *Ibid.*

423. In such a case the owners of the junior grant are entitled to the residue of the land within the limits of their grant, after satisfying the calls of the senior grant. *Ibid.*

424. The act of March 3, 1851, chap. 41, section 13, authorizes the surveyor-general to determine, in case of conflicting claims to the same land, which of the two claimants has a better right according to the principles of justice. *Ibid.*

425. The Secretary of the Interior has no power to review the survey of a private land claim in California, upon the application of individuals interested in the land, after the survey has been approved by decree of the district court. *Opinion of March* 15, 1860, 9 Op. 420.

426. The Jimeno grant being the elder in point of time, is entitled to a preference in location. *Opinion of Dec.* 17, 1860, 9 Op. 527.

427. A patent should be issued on the Jimeno survey, although the interfering Colus survey may have been returned into the district court of the United States for the northern district of California. *Ibid.*

428. A patent may be issued to the Jimeno claimants, saving the rights of the Colus claimants, if they are willing to accept it. *Ibid.*

429. Congress had power to dispose of lands claimed by settlers upon the Soscal Ranch, California, under the pre-emption laws, at any time before the proof and payment required by those laws were made. *Opinion of May* 26, 1866, 11 Op. 490.

430. Settlement on the public lands of the United States confers, of itself, no right against the Government. It gives the settler, under the pre-emption laws, a right to enter the lands occupied and improved, when they are

open to sale and he has complied with the laws in respect to proof of settlement and payment of the prescribed consideration. *Ibid.*

431. Congress had power, as against persons who, before the passage of the act of March 3, 1863, chap. 116, had settled upon the lands in that ranch, but who had not perfected their right of entry, to confer upon claimants, under the Vallejo title, an absolute title to all the land purchased from Vallejo or his assigns. *Ibid.*

432. It was the intention of Congress to enable any *bona fide* purchaser from Vallejo, whether resident or not of California, who should prove that he had effected, either personally or through a tenant, settlement of part of the tract embraced by his claim, to acquire title thereto from the United States. *Ibid.*

433. The act of July 1, 1864, chap. 194, does not apply to surveys which had become final by lapse of time or approval of the district court before it went into operation. *Opinion of Feb.* 15, 1867, 12 Op. 116.

434. A patent should be issued upon a survey which became final and conclusive before the passage of that act. *Ibid.*

435. A patent may be issued for land which has been surveyed and the survey of which has been acted upon by the district court, before the time limited by the act of July 23, 1866, chap. 219, for appeal to the circuit court, if all the parties of record in the case in the district court expressly waive, by agreement of record, their right of appeal. *Opinion of Feb.* 25, 1867, 12 Op. 121.

436. Where a survey and plat of a confirmed California land claim were made by the surveyor-general, and notice of the same, with his approval, was given by publication, conformably to the act of June 14, 1860, chap. 128, but the surveyor-general failed to transmit the survey and plat to the General Land Office until after the passage of the act of July 1, 1864, chap. 194, repealing the act of June 14, 1860: *Held*, that it was the duty of the Commissioner to issue a patent according to the survey and plat transmitted to him by the surveyor-general of California. *Opinion of Sept.* 30, 1867, 12 Op. 251.

437. No steps having been taken to invoke the jurisdiction of the district court, the title to the land covered by the survey and plat vested absolutely in the claimant, and the repeal of the statute, after the title so vested, cannot be construed to have divested that title. *Ibid.*

438. A title vested by statute is just as complete as one vested by the issuance of a patent, and where the title is vested prior to a patent, the only office of the patent is to afford the party more convenient evidence in establishing his right when brought in contest. *Ibid.*

439. The authority to issue a patent for confirmed grants in California, after the repeal of the act of June 14, 1860, is given by the thirteenth section of March 3, 1851, chap. 41. *Ibid.*

440. The Secretary of the Interior has supervisory power over the acts of the Commissioner of the General Land Office in the matter of granting or refusing a patent on a California land claim, or any action of the Commissioner approving or disapproving of the survey. *Ibid.*

441. Section 13 of the act of March 3, 1851, chap. 41, to ascertain and settle private land claims in California, directs the issue of a patent by the General Land Office only where the claim has been finally confirmed as therein stated, and thus in effect withholds authority to issue one where the claim has never been before the commission constituted by that act. *Opinion of May* 2, 1872, 14 Op. 39.

442. Accordingly, where it appeared that an applicant for a patent for the island of Yerba Buena, claiming title thereto under a Mexican grant, had never presented his claim to said commission: *Held*, that this circumstance alone furnished sufficient ground on which to deny his application. *Ibid.*

443. A survey of a private land claim in California was made in 1867, and forwarded by the surveyor-general for that State to the Commissioner of the General Land Office, who approved the same, but from whose decision an appeal was taken to the Secretary of the Interior, by whom the survey was disapproved and a new one ordered, which has not been made: *Held*, upon these facts, that it was competent to the successor in office of the Secretary who ordered the new survey to set aside or revoke that order. *Opinion of Aug.* 2, 1872, 14 Op. 74.

444. In the case of the rancho "Guadalupe" (which involves the validity of two patents issued upon a California private land claim,

in 1866 and the other in 1870, both, how-
:, having been afterward recalled by the
d Department) upon the facts submitted:
d, that there was no legal authority for is-
ıg the second patent, and that the first
ent should be delivered to the confirmees
he claim. *Opinion of March* 10, 1873, 14
602.

45. The provision in the act of June 14,
), chap. 128, that notice of the survey and
made by the surveyor-general of Califor-
be given by advertisement, requires a pe-
of four weeks to elapse between the first
rtion and the act to be done (*i. e.*, the re-
al of the plat, &c., from the surveyor-gen-
's office) which such notice is to precede,
insertions being repeated once a week in
ı week during the same period. *Ibid.*

46. Advertisement of said notice was made
Santa Barbara, in a newspaper called the
nta Barbara Gazette," which was printed
an Francisco and thence immediately sent
anta Barbara for distribution, where it was
ributed: *Held*, that Santa Barbara may be
rded as the "place of publication" of
paper, and (as far as that is material) the
uirement of the statute complied with.
d.

XIV. Private Land Claims in Florida.

47. The King of Spain had ample power to
nt lands in Florida while the province was
, and the Roman Catholic Church was capa-
of taking his grants; but whether the
ds in question were granted prior to the
e stipulated is a question of fact to be de-
nined. *Opinion of July* 19, 1822, 1 Op. 563.

48. A Spanish grant, made upon false sug-
ions, would have been canceled by the
ish sovereign, and an American court of
ty should not lend its aid to enforce it.
ion of April 1, 1829, 2 Op. 191.

9. A grant made December 2, 1820, was
olation of the eighth article of the treaty of
on. *Ibid.*

0. The settled policy of Spain was to par-
ut her colonial domain with reference to
ingle object of population; and grants for
urpose of speculation were not tolerated.

1. It is competent only for the sovereign
ing the grant to release the condition on
h it is made. Matters in excuse of non-compliance are not the subject of judicial inquiry. *Ibid.*

452. The claimants of certain lands in Florida, under a grant known as the "Arredondo grant," having instituted proceedings under the act of May 26, 1824, chap. 173 (made applicable to Florida by the act of May 23, 1828, chap. 70), to establish its validity, and having obtained a decree confirming the same, provided it could be located according to its description, which decree was substantially affirmed by the Supreme Court on appeal, with the qualification that unless certain points and locations could be made it would be void for uncertainty; and a mandate to that effect having been sent to the court below, before which all proceedings were suspended until a report was made by the surveyor-general to the General Land Office that the grant could be located under the said opinion, are not entitled without completing their legal proceedings and obtaining a judicial decision upon all the questions necessary to be decided, to take the like quantity of land in parcels from other lands in Florida subject to entry and sale. *Opinion of June* 4, 1849, 5 Op. 110.

453. The validity of the grants embraced by the act of 1824, as well as their extent and boundaries, were to be submitted to and be determined by the courts as judicial questions; and they must be so determined before the executive department can act in the premises. *Ibid.*

XXV. Private Land (including Back Land Pre-emption) Claims in Louisiana.

454. The Ursuline nuns of New Orleans have possessory title to their inclosure that cannot be disturbed. *Opinion of April* 11, 1820, 1 Op. 350.

455. Claimants are liable for the expenses of surveys of private land claims only where there had been no survey of the claim under the French or Spanish Governments previous to the delivery of possession of the territory, and where surveys are deemed necessary by the commissioners to enable them to decide on the validity of the claims. *Opinion of April* 8, 1824, 1 Op. 655.

456. The concession in favor of William Musick is a valid claim under the first section of

the act of March 2, 1805, chap. 26, to the whole amount of the survey made in 1796. *Opinion of April* 8, 1824, 1 Op. 656.

457. A concession confirmed under the fourth section of act of March 3, 1807, chap. 36, where the commissioners issued a certificate for eight hundred arpents, according to the original plat, without ordering a resurvey under the seventh section, is good for the quantity contained in the plat, though it exceeded the quantity specified. *Ibid.*

458. The first section of the act of April 12, 1814, chap. 52, confirmed the claim according to the survey, where a survey had been made. A mistake of the commissioners was immaterial, as the confirmation was effected by the act solely. The commissioners only reported upon, did not decide, the claims. The third section required surveys only where none had been made by the foreign government. *Ibid.*

459. The right to enter back lots is not limited to proprietors whose lands front on navigable streams. If there be a perennial flow of water, they may be rivers, creeks, bayous, or water-courses, within the meaning of the law. *Opinion of July* 3, 1838, 3 Op. 336.

460. The register and receiver, under the power given them in section 12 of the act 3d March, 1819, chap. 100, may examine the claim of De Feriot, and the evidence on which it was founded, for the purpose of ascertaining whether it was founded on a real or fabricated grant; and, also, for the purpose of ascertaining whether or not the confirmation was fraudulently obtained; and if satisfied that fraud has been practiced, they ought not to make the survey nor issue the certificate. *Opinion of July* 21, 1838, 3 Op. 343.

461. The President may withhold a patent in such case, even though a certificate shall have been issued. *Ibid.*

462. In case of an equitable claim in favor of an innocent purchaser, the land should be reserved from sale in order to give him an opportunity to apply to Congress. *Ibid.*

463. Back land pre-emptions cannot be lawfully claimed by those who were not owners of land on a river, creek, &c., at the time of the approval of the act of June 15, 1832, chap. 140; and individuals entitled to lands, but who had not located them at the date of said act, cannot be considered to have perfected a title to any specific lands so as to be regarded as owners within the meaning of the act. *Opinion of April* 16, 1839, 3 Op. 452.

464. The land in controversy was not subject to pre-emption, for the reason that the claimant did not own the front lands in 1832. *Ibid.*

465. The report of the land officers of 20th December, 1817, and the confirmatory act of Congress of the 11th May, 1820, chap. 87, ought to be regarded as confirming the title of Morgan to the full extent of his grant issued by Governor Galvez on the 24th January, 1777. *Opinion of March* 20, 1840, 3 Op. 501.

466. The claim of P. to a patent for 17,084 arpents of land in Mississippi, on pretense that his title is founded on a legal British grant made previous to 1783, and recognized and confirmed by the Spanish Government in 1810, cannot be recognized at the General Land Office. *Opinion of July* 16, 1840, 3 Op. 569.

467. His claim having been reported and confirmed as one founded on a private conveyance for 1,280 acres only, as a donation, a patent for that quantity only can issue, unless further legislation shall authorize it. *Ibid.*

468. The right of H., who derived title from McD., to a tract of land on Bayou Sara, in Alabama, was confirmed by the act of 2d March, 1829, chap. 40, to the extent of 1,280 acres. *Opinion of Feb.* 23, 1841, 3 Op. 618.

469. The provisions of the act entitling a confirmee to a patent are positive; and it ought to be issued for the tract as located, unless it shall be made satisfactorily to appear that the bayou, which is the chief landmark, does not exist at the place described. *Ibid.*

470. The error as to the date of a certain report of the Commissioner of the Land Office, embracing the Maison Rouge claim, set out in a confirmatory act of April 29, 1816, chap. 159 (being December 4, 1812, when it should read December 14, 1812), is not fatal to claims mentioned in the said report. *Opinion of Nov.* 27, 1841, 3 Op. 715.

471. The construction of a statute is placed by the law in very much the same category as that of wills, and such erroneous recitals are susceptible of correction by parol evidence. *Ibid.*

472. The "league square" is the extent of the satisfaction granted to claimants under the

act of April 29, 1816; and whatever may be the extent of the claim, this satisfaction may be had under the act. *Ibid.*

473. In respect to the Maison Rouge claim it may be said: The claim to all beyond a league square is unconfirmed, and stands, in every respect, as if the act of Congress had not been passed, except that the fact that Congress has refused to acknowledge it further has the effect to raise a presumption that Congress, by a partial confirmation, did not mean to admit the justice of the claim, but only to buy its peace; and that the executive department must regard the claim, whatever may be its extent, as satisfied by the acceptance of a league square. *Opinion of Dec.* 22, 1841, 3 Op. 737.

474. By an act approved March 3, 1819, chap. 100, there were confirmed to J. F. & Co. 310 arpents of land near Mobile; and the question of the extent of the claim confirmed was acted upon many years ago. *Opinion of March* 20, 1843, 4 Op. 157.

475. The survey, as executed by the surveyor-general, which recognizes the claim of J. F. & Co. to hold the strip of land not embraced in the original British grant, ought not to be disturbed. *Ibid.*

476. It is the Spanish grant, enlarging the English grant, that is confirmed, whereby the strip of land between the latter and the river is added. *Ibid.*

477. Concessions of crown lands to individuals in Louisiana, executed in conformity with the laws and usages of the Government of Spain whilst that territory was under her dominion, and which were reserved in the treaty of Paris of 1803, must, in general, be held to have been limited to such surveys, descriptions, and demarcations as were sufficient to sever them from the body of the public domain. There is no recognized principle of law to justify a construction extending them beyond the actual surveys and locations upon which they were made. *Opinion of Dec.* 31, 1847, 4 Op. 643.

478. The title of M. C. to the lands known as the "Houmas tract," situate on the left bank of the Mississippi River, above New Orleans, which were once possessed by the Bayou Goula and Houmas Indians, and granted with their assent by Governors Unzaga and Galvez, in front and back concessions, prior to the cession of Louisiana to the United States, was valid to the extent of the surveys and locations, and no further. *Ibid.*

479. The two patents issued by the Executive on the 22d of August, 1844, upon the Donaldson, Scott, and Clarke claims, so called, were unauthorized by law, and are void. *Ibid.*

480. But as the original concessions cannot be recognized to have conveyed any lands beyond the limit of 42 arpents from the Mississippi River, those in the rear thereof, and which had not been otherwise granted, were vested by the treaty in the United States. *Ibid.*

481. Pre-emptors for back lands in Louisiana, under the act of 3d March, 1811, chap. 46, continued by that of 11th May, 1820, chap. 87, which reserved such lands from sale for three years, who made the entry, gave the notice, and paid for the same as therein provided, are entitled to patents, although others may have obtained patents for the same land pursuant to private entry. *Opinion of July* 29, 1848, 5 Op. 8.

482. As against pre-emptors who have complied with the conditions of the law, the executive department has no right to convey to others; and whenever it does so the grants are void. *Ibid.*

483. Claim of entry by location of a land warrant of the State of Louisiana on lands reserved from entry by reason of their belonging to the contested grant of Maison Rouge. *Opinion of July* 23, 1856, 8 Op. 16.

484. Claim of pre-emption in the same lands by entry for the purpose of pre-emption. *Ibid.*

485. By the act of June 15, 1832, chap. 140, authorizing the inhabitants of Louisiana to enter back lands, the right of back land pre-emption is not given to a person whose front land does not border upon a stream, but is a tract through which the stream runs. *Opinion of Nov.* 26, 1860, 9 Op. 511.

486. The river, creek, bayou, or water course must be navigable. *Ibid.*

487. Where entry was made of lands bordering on an unnavigable stream, by mistake of law, a patent should not be granted to the claimant. *Ibid.*

488. Under the act of June 26, 1856, chap. 47, erroneous or informal entries or locations of lands made in ignorance or mistake of matters of law and not of fact cannot be confirmed. *Ibid.*

489. The ownership of the front lands on a river, creek, bayou, or water course at the date of the passage of the act of June 15, 1832, chap. 140, is essential to the right of back land pre-emption. *Opinion of Nov.* 26, 1860, 9 Op. 514.

490. Where the grantor of a claimant of a right of back land pre-emption under that act was, on June 15, 1832, the owner of a confirmed Spanish claim, which was not located on the tract in question fronting on a navigable stream, till the year 1835: *Held*, that the grantor of the claimant was not the owner of the tract fronting on such stream at the date of the act of 1832. *Ibid.*

491. The claimants under Spanish grants have no title to any specific tract until their grants are lawfully located upon it. *Ibid.*

492. The ownership at the date of the passage of the act of 1832, contemplated by the statute, is that of some specific piece of land bordering on a navigable stream. *Ibid.*

XXVI. Private Land Claims in Michigan.

493. P. Bonhomme has no claim to any lands within the military reservation on which Fort Gratiot stands, which the executive department will recognize. Whatever right the priority of his location may have given him, the same has not been recognized by Congress, under whose authority only can a patent issue for so much of the land embraced in his claim as lies without the limits of the military reservations. *Opinion of June* 16, 1829, 2 Op. 207.

494. It having been decided by a former Attorney-General (Butler) that the Catholics, as well as the Baptists, have an interest proportionate to their improvements in the net proceeds of the sales of the 160 acres of land upon Grand river, ceded to "the missionary society," in the treaty with the Ottawas, ratified May 27, 1836; and since it appears, from the papers produced, that the Catholics have a small establishment there, the Department is advised to distribute the fund in proportion to the appraised value of their respective improvements. *Opinion of March* 17, 1843, 4 Op. 153.

495. Therefore the Baptist society is not entitled to a patent for the whole land unless the Catholics will consent to take a pecuniary indemnity in satisfaction of their proportion of the appraised value of the improvements. *Ibid.*

496. But the above opinion is one of acquiescence, from expediency, in the views of Mr. Butler, and not the judgment of the present Attorney-General, if the question were *res integra*. *Ibid.*

497. The sale of the missionary lot to the Baptist mission being irregular and unsatisfactory to the Catholic mission, it should be rescinded and the property placed in the situation in which it existed before any proceedings were had in regard to it, and be resold upon such notice and terms as shall be satisfactory to all the parties concerned. *Opinion of Oct.* 2, 1843, 4 Op. 255.

XXVII. Private Land Claims in Mississippi Territory.

498. Grants made by the Spanish Government after the ratification of the treaty by which the land was ceded to the United States, are void; and though a patent were dated before, unless it were delivered before, it fails to carry the title. *Opinion of March* 26, 1802, 1 Op. 108.

499. Although *prima facie* every deed may be presumed to have been delivered on the day of its date, the presumption may be removed by proof. *Ibid.*

500. Where there are interfering grants, and the question is which was first made, or when they were respectively made, and there is no registry at hand to decide it by, nor any statute mode of ascertaining the matter, the greatest latitude should be given for the admission of evidence, and especially in the suppression of fraud. *Ibid.*

501. The third section of the act of February 19, 1831, chap. 30, does not confer the right of purchase and consequent title to the widow and children of A. Follin, deceased, to the exclusion of his assignees claiming under the provisions of the second section of the act of 1831 and also under the act of February 19, 1833, chap. 30. *Opinion of Dec.* 5, 1835, 3 Op. 28.

XXVIII. Private Land Claims in Missouri and Arkansas.

502. The third section of the act of April 12, 1814, chap. 52, makes it the duty of the Commis-

sioner of the General Land Office to examine whether the certificate of the recorder of land titles in Missouri was fairly issued to an assignee according to the true meaning and intent of that act; and if found not to have been so, to withhold a patent. *Opinion of April* 12, 1825, 1 Op. 718.

503. The act of May 26, 1824, chap. 173, concerning land claims in Missouri and Arkansas, required the district attorney to make out a statement containing the facts of the case, and the points of law on which the same was decided. A copy of the record is not enough. *Opinion of Dec.* 8, 1827, 2 Op. 64.

504. The act of January 6, 1829, chap. 2, relative to location of land claims in Arkansas, is confined to the settlers dislodged by the Cherokee treaty of May, 1828. *Opinion of Jan.* 17. 1829, 2 Op. 190.

505. The individual who appeared before the board of commissioners, and whose claim was favorably reported upon by them (not the original grantee), is to be regarded as the confirmee under the act of 4th July, 1836, chap. 361, and is authorized to make the location. *Opinion of Aug.* 6, 1838, 3 Op. 351.

506. Patents are unnecessary to complete title to an unsold portion of the confirmed claim. A grant may be as effectually made by law as by a patent issued in pursuance of law. *Ibid.*

507. The location spoken of in the second and third sections of that act must be confined to one land district and made at one time; but the party may enter separate tracts, conformably to legal divisions and subdivisions, for which a patent must be issued. *Ibid.*

508. Sales made by officers of the United States of lands afterwards confirmed to a Spanish claimant must yield to the confirmed claim, unless such sales have been made by authority of law. *Opinion of Aug.* 8, 1838, 3 Op. 354.

509. The inhabitants of the village of Saint Charles, under the laws of the 13th June, 1812, chap. 99, the 26th May, 1824, chap. 184, and the 27th January, 1831, chap. 12, have precedence and priority over Peter Chouteau, whose claim to land was confirmed 4th July, 1836, and the claim of the latter must be located elsewhere upon the public domain. *Opinion of March* 18, 1839, 3 Op. 427.

510. All sales and locations made of lands claimed under unconfirmed titles derived from France or Spain between the 26th May, 1830, and the 9th July, 1832, are void. *Ibid.*

511. The claim of the heirs of Mackay, founded on a special grant made in the year 1799, containing an exact description of the land, and accompanied with uninterrupted possession ever after, having been submitted to the district court of Missouri, and by appeal to the Supreme Court of the United States, and adjudged to be a valid and lawful grant, a patent should issue to the heirs for it, notwithstanding New Madrid sufferers may have located upon it. *Opinion of March* 27, 1840, 3 Op. 506.

512. But to protect any adverse rights that may exist, the patent should contain a clause reserving the rights, now or heretofore existing, of all just and legal adverse claimants to the whole or any portion of the land patented. *Ibid.*

513. The confirmatory act of July 4, 1836, chap. 361, gave to the sons of Benito Vasquez an absolute claim to lands; but the same was a floating right and cannot be located on any of the public land of the United States until further legislation shall be had in the premises. *Opinion of Feb.* 5, 1841, 3 Op. 615.

514. The confirmees under the treaty of 1803 with France, under which their claims are asserted, do not claim the *dominium* of the civil law, but the doing of what is necessary to complete title and convey property. The lands to which they lay claim form a part of the public domain; and, although the United States acknowledge themselves bound to provide for them, the whole subject remains in contract. *Opinion of Dec.* 7, 1841, 3 Op. 721.

515. The acts of May 26, 1824, chap. 184, and July 4, 1836, chap. 361, which confirm the French and Spanish grants, are not required to be carried into specific performance, if it cannot be done without unsettling titles in the country in question. *Ibid.*

516. Prior confirmations, school sections, ordinary sales prior to the confirmatory act of 4th July, 1836, and the New Madrid locations under the act of 17th February, 1815, chap. 45, are valid as against the claim confirmed by the act of 4th July, 1836. *Ibid.*

517. A lot of land in the Saint Louis commonfields having been set off as vacant by the surveyor-general for the use of schools, it not having been entered on the lists of the re-

corder, as required of private claims in such cases, and the United States having relinquished all their right, title, and interest in and to all out-lots and common-field lots reserved for the support of schools to the State of Missouri, and the same now being claimed by heirs of one Vifvarenne: *Held*, that the executive department cannot administer relief in such a case; that the parties must assert their rights before the judiciary. *Opinion of July* 23, 1846, 4 Op. 510.

518. The decision of the Commissioner of the General Land Office respecting the location of certain Spanish concessions to Esther, Brazeau, Labaume, and Chouteau, respectively, are correct, and patents should be issued in conformity therewith. The appeals from the decisions of the Commissioner were not well taken. *Opinion of May* 6, 1851, 5 Op. 367.

519. In the matter of the claim for a tract of land near Saint Louis, Mo., confirmed to Angelica Chouvin, assignee of Jean F. Perry, in 1811, the facts presented showing that two surveys of the claim have been made, but that both of them have been rejected by former heads of the Land Department: *Held*, that it is competent to the present head of that department to order a new survey. *Opinion of Aug.* 9, 1872, 14 Op. 95.

520. The seventh section of the act of March 3, 1807, chap. 36, entitles the claimant to a survey that will determine the location and boundaries of the land, and enable him to obtain the patent provided for by the sixth section of the same act. *Ibid.*

521. In November, 1799, a concession of four square leagues of land, in territory now within the State of Missouri, was made by the Spanish authorities to M. for certain purposes. In February, 1806, the land was surveyed, and the survey certified to by the surveyor-general for Upper Louisiana. In June, 1806, and again in May, 1810, claim for the land under said concession and survey was presented by M. to the board of land commissioners for Louisiana Territory and was rejected. M. died on the 28th of May, 1814. On the 27th of April, 1816, Congress passed an act for the relief of certain nephews of M., which released to and vested in them all the right, title, and interest of the United States in and to any real estate whereof M. died seized. The land included in said survey having since been surveyed by the United States as public lands, and a large part thereof disposed of, the heirs of the nephews aforesaid have applied for scrip under the act of June 2, 1858, chap. 81, in lieu of the land: *Held*, (1) that M.'s seizure of the land referred to, at the time of his death, may be proved by traditionary or hearsay evidence; (2) that by the presentation of the concession and survey to the board of commissioners, and from the recognition by Congress of possession and claim according thereto as existing in claims of the same class from 1811 to 1829, M. must be regarded to have been seized of the land when he died; (3) that accordingly M. "died seized" of the land within the meaning of the act of 1816; (4) that this act is equivalent to a patent for a specific tract of land, and both located and satisfied the inchoate claim of M.; (5) that the act of 1858, being limited to land claims not located or satisfied, is inapplicable. *Opinion of Nov.* 5, 1875, 15 Op. 519.

XXIX. Private Land Claims in New Mexico.

522. Private land claim for the rancho "Los Trigos," in New Mexico, was confirmed (as No. 8) by the act of June 21, 1860, chap. 167, but which act made no provision for the issuing of a patent to the confirmees. The latter, however, contend that they are entitled to have a patent issued to them therefor, first, by virtue of the provisions of art. 8 of the treaty of Guadalupe Hidalgo (9 Stat., 929); and, second, by virtue of the provisions of section 2 of the act of March 3, 1869, chap. 152: *Held*, that the treaty provisions referred to do not make it obligatory upon the Government to issue patents in such cases; but that, under the provisions of the act of March 3, 1869, the confirmees are entitled to a patent for the claim mentioned. *Opinion of Feb.* 21, 1874, 14 Op. 624.

523. The action of the register and receiver of the proper land district, in passing upon claims of derivative claimants to lands heretofore claimed by Vigil and St. Vrain, under the provisions of the act of February 25, 1869, chap. 47, amendatory of the act of June 21, 1860, chap. 167, was final, and not subject to revision by the Land Department. *Opinion of May* 15, 1876, 15 Op. 94.

524. Col. William Craig, a derivative claimant under Vigil and St. Vrain, having established his claim "to the satisfaction" of the register and receiver of the proper land district, thereby became entitled to have furnished to him by the surveyor-general of Colorado, as evidence of title, an approved plat of the land which was awarded to him by the register and receiver aforesaid. In view of which: *Advised*, that the President direct the Commissioner of the General Land Office to instruct the surveyor-general of Colorado to deliver to Colonel Craig an approved plat of the land so awarded. *Ibid.*

XXX. Private (including Donation) Land Claims in Oregon.

525. Under the fourth section of the act of September 27, 1850, chap. 76, a married man who settled upon a tract of land in Oregon, and complied with the provisions of the law, is entitled to a patent for six hundred and forty acres, one-half to himself and the other half to his wife, notwithstanding the fact that she did not reside with him, or on the land, during the four years of occupancy required. *Opinion of Nov.* 25, 1862, 10 Op. 380.

526. The act of August 14, 1848, chap. 177, to establish the Territorial government of Oregon, vests in each religious society a perfect title to the land (not exceeding six hundred and forty acres) occupied by it in the Territory of Oregon on the day of the date of the act as a missionary station among the Indians; and all that a claimant of land under that act is required to prove to establish a perfect title is that upon the 14th of August, 1848, it did occupy the land as a missionary station among the Indian tribes in said Territory. *Opinion of May* 27, 1864, 11 Op. 47.

527. The question of fact upon which the title of claimants under the act depends should be left by the Land Office to the decision of the courts. *Ibid.*

528. No executive officer has power to determine that question definitely. The claimants may recover the land in the courts even after a decision against them by the Land Office. *Ibid.*

429. The Land Office should refuse to issue a patent to claimants of land under the act of August 14, 1848, and thus decline jurisdiction of the questions of fact on which their title depends. *Ibid.*

XXXI. Missionary Stations.

530. The provision in the acts of Congress establishing Territorial governments respectively for Oregon and Washington Territories (viz, acts of August 14, 1848, chap. 177, and March 2, 1853, chap. 90) confirmed the title of the Saint James Mission to the lands occupied by it in those Territories at the date of either of the acts. *Opinion of May* 24, 1859, 9 Op. 339.

531. The subsequent declaration of a military reserve, embracing the buildings and enclosed grounds of the Mission, could not divert the right thus perfected. *Ibid.*

532. The claim of the Mission cannot lawfully extend to the lands or improvements which at both the dates mentioned were claimed, inclosed, and used by other parties adversely to the church and which the Mission had never actually or constructively occupied. *Ibid.*

533. It is within the competency of the Land Department of the Government to determine whether the Roman Catholic Mission of Saint James has acquired title to the land claimed by the latter at Fort Vancouver, Washington Territory, under the first section of the act of August 14, 1848, chap. 177. *Opinion of March* 2, 1872, 14 Op. 12.

XXXII. Indian Title.

534. According to the public law of all the American states founded by Europeans, the aboriginal inhabitants have only a usufructuary interest in the soil, the fee-simple and the eminent domain of which are in the Government, and which may be granted in fee to private persons as well before as after the extinguishment of the occupation rights of the Indians. *Opinion of Dec.* 22, 1856, 8 Op. 256.

XXXIII. Intruders.—Cutting or Removal of Timber.

535. The reservations mentioned in the treaty concluded with the Cherokees on the 7th of June, 1866 are not lands from which intruders may be expelled by military force under the provisions of the act of the 30th of March 1802, chap. 13. *Opinion of April* 11, 1812, 5 Op. 666.

536. Intruders on public lands without title subsequent to the date of the act of March 3, 1807, chap. 46, may be removed under the provisions of that act without three months' previous notice. If the marshal fail to effect such removal the President may employ military force. *Opinion of April* 4, 1815, 1 Op. 180.

537. Intruding settlers on the public lands may be removed by military force, under act of March 3, 1807, chap. 46. The United States have, also, all the common law and chancery remedies of individuals, under similar circumstances, for protection and redress. *Opinion of May* 27, 1821, 1 Op. 471.

538. The President may direct the marshal to remove intruders from lands the title of which has not passed out of the United States. *Opinion of June* 25, 1821, 1 Op. 475.

539. Where persons are in possession of lands under a Spanish title, which has been reported by the register of the proper land office to the Secretary of the Treasury, and are at law contesting their titles as against claimants, they are not intruders within the meaning of the act of March 3, 1807, chap. 46, to prevent settlements being made on lands ceded to the United States until authorized by law. *Opinion of Feb.* 14, 1825, 1 Op. 703.

540. Proceedings may be taken under the first section of the act of 2d of March, 1831, chap. 66, against any person who shall have cut and removed any ship timber from lands acquired by the United States. *Opinion of June* 9, 1832, 2 Op. 524.

541. The President may employ such military force as he may judge necessary and proper to remove persons who may intrude upon any lands ceded or secured to the United States by any treaty made with a foreign nation, or by a cession from any individual State; and may adopt that method in respect to the lands in ceded to the United States by the Creek treaty of March 24, 1832. *Opinion of Aug.* 22, 1833, 2 Op. 575.

542. The President has power to expel intruders from lands secured to Chickasaws east of the Mississippi, by military force if necessary. *Opinion of July* 6, 1837, 3 Op. 255.

543. The President may authorize the marshal to remove all persons who have fixed their residence on the public reservations, without authority, beyond the lines of the posts of Tampa Bay, for the purpose of selling liquor to the troops, and the suspected purpose of supplying the Indians with ammunition. *Opinion of July* 9, 1840, 3 Op. 566.

544. Settlers on the public lands in East Florida under the act to provide for the armed occupation and settlement of the unsettled part of the peninsula of East Florida, have not a right to cut live-oak and other timber, except for the purpose of clearing, until they comply with all the conditions of the law. *Opinion of Aug.* 11, 1843, 4 Op. 221.

545. They have all the rights necessary to enable them to perfect their title by clearing, improving, and inclosing the land, but have no right to cut, or to have cut, valuable timber for sale or export. *Opinion of July* 16, 1845, 4 Op. 405.

546. The President of the United States has lawful authority summarily to remove intruders from lands duly held by the Government for the sight of a light-house or for any other public purpose. *Opinion of Sept.* 21, 1855, 7 Op. 534.

547. The President should not exercise the power conferred by the act of March 3, 1807, chap. 46, to remove squatters from lands of the United States over which a right of way has been granted by Congress to a railroad company. *Opinion of June* 24, 1861, 10 Op. 71.

548. The President, under the authority conferred by the act of March 3, 1807, chap. 46, may direct the marshal of the United States to remove summarily all intruders and depredators from the public coal and other mineral lands in California. *Opinion of Feb.* 11, 1862, 10 Op. 184.

549. Sections 4 and 5 of the act of June 3, 1878, chap. 151, entitled "An act for the sale of timber lands in the States of California, Oregon, Nevada, and in Washington Territory," construed in connection with section 2461 Rev. Stat., punishing the cutting or removal of timber growing on the public lands. *Opinion of Oct.* 22, 1878, 16 Op. 189.

XXXIV. Construction of Road Through.

550. For the construction of a Territorial road authorized by Congress it is lawful to take timber and other materials from land claimed for pre-emption but not yet patented. *Opinion of Sept.* 2, 1856, 8 Op. 71.

V. Registers and Receivers.

he President cannot appoint registers vers for the land districts until there sufficient land surveyed to authorize ing of land offices. *Opinion of Aug.* 1 Op. 291.

ecisions of registers and receivers upon offered to establish pre-emption rights e acts of 29th May, 1830, chap. 208, June, 1834, chap. 54, are conclusive. t in a judicial capacity in weighing ling upon the sufficiency of the evi- ered; and although they are to observe s prescribed by the Commissioner of Office, they cannot be compelled to any judgment but their own. The f patents, however, depends on the ioner, who may suspend them, where sions were obtained by fraud or in material errors of fact or law, until ion of the judiciary or the direction of can be obtained. *Opinion of April* 3 Op. 93.

nder the act of the 19th February, p. 30, registers of land districts are lges of the validity of purchases made e first section thereof, and the Treas- rtment has no power to revise or re- r decisions. *Opinion of April 20, 1826,* 1.

xcept in the mode specially provided e, registers of the land offices cannot be concerned in the purchase of pub-

They are agents of the Government nd upon principle, as well as by the erms of the act of May 10, 1800, chap. ng their offices, they are precluded ering on their books any application in their own names, or in the name ber person in trust for them. If they purchase land, they are required to lication to the surveyor-general, who rized to make the proper entries and n such cases. *Opinion of Aug. 12,* p. 223.

nt receivers being a different class of nd standing in relations to the Gov- different from those sustained by reg- y purchase the public lands the same citizens. The law has imposed no re- pon receivers in this respect, and the their public duties indicates no ne- any. *Ibid.*

556. The executive department may enforce by regulations the prohibitions of the law as to purchases by registers; but it is not competent to that department to make regulations to restrain receivers of public moneys from purchasing the public lands like other citizens. *Ibid.*

557. Registers by express terms of statute, and receivers by legal construction, may purchase public lands at private entry. But neither registers nor receivers can purchase such lands by pre-emption within their respective districts. *Opinion of March 7, 1850, 7 Op.* 647.

558. A receiver of public moneys is not entitled to an allowance for extra clerk hire, under act of August 18, 1850, chap. 129, in the absence of an appropriation from which it can be paid. *Opinion of Feb. 11, 1863, 10 Op.* 456.

559. A receiver is entitled to mileage for transporting money to a place of deposit, even if the journey be made by his agent, and not by himself. *Ibid.*

PUBLIC LOANS.

See also BONDS OF THE UNITED STATES; FUNDED DEBT.

1. Although the thirteenth section of the funding act of Aug. 4, 1790, chap. 34, admits subscriptions to the loan payable in the principal and interest of certain State certificates or notes, *redeemed notes cannot be used for that purpose. Opinion of Nov. 9, 1791, 1 Op. 25.*

2. Where certificates of United States stock, with coupons of interest attached, issued under the acts of April 15, 1842, chap. 26, and March 31, 1846, chap. 25, transferable by delivery, have been lost, it is competent for the Secretary of the Treasury to issue any other security which would be truly its representative or substitute, without a special act authorizing what in such case would be equivalent to the issue of new stock. *Opinion of Jan. 17, 1848, 5 Op. 66.*

3. But in case of the total destruction of certificates, it is competent for the Secretary to furnish the holder at the time of the destruc-

tion thereof, with new evidence of his claim upon the Government. *Ibid.*

4. A valid transfer of certificates of coupon stock, issued under the second section of the act of March 31, 1848, chap. 26, may be made by an indorsement in blank; the object of that part of the section referring to coupons being to enable the certificates to pass by delivery. *Opinion of May* 12, 1849, 5 Op. 100.

PUBLIC MONEYS.

See also DEPOSIT OF PUBLIC FUNDS; DISBURSEMENT OF PUBLIC MONEYS.

1. Under the act of June 23, 1836, chap. 115, to regulate the deposits of the public money, the deposit banks are required to pay interest upon any sum of public deposits which may remain in them to the credit of the Treasurer of the United States over and above three-fourths of their capital, respectively, for the period which may elapse before the Secretary of the Treasury shall find it expedient to transfer it to another bank, whether the same have been used or left unemployed. *Opinion of Aug.* 1, 1836, 3 Op. 141.

2. Deposit banks, from which a transfer is ordered, are liable for interest until the moneys transferred shall be actually placed to the credit of the Treasurer in those to which the transfers shall be made. *Ibid.*

3. Money held by the agencies of deposit banks must be regarded, in respect to liability for interest, as well as in all other respects, precisely as if no agencies existed, and as if the money were held at its ordinary place of business and in the ordinary way. Interest should be charged upon the amount which may be held by both the bank and its agencies above one-fourth of the capital stock. *Ibid.*

4. Transfers of money to the Mint, by order of the President, for the purpose of coinage, in execution of the proviso to the twelfth section of the act of June 23, 1836, chap. 115, should be made by drafts in the same manner as from one deposit bank to another, the money so tranferred remaining to the debit of the Treasurer as money in the Treasury. *Opinion of Aug.* 2, 1836, 3 Op. 144.

5. The expression "a whole quarter of a year," in section 11 of the act of June 23, 1836, chap. 115, means a whole fiscal quarter as known at the Department from its organization. *Opinion of Oct.* 27. 1836, 3 Op. 156.

6. Banks employed as depositaries before the passage of the act of 1836, which have had an amount exceeding one-fourth of their capital, during the whole of the fiscal quarter elapsed since the act, are chargeable with interest for the quarter, although their agreements were not executed until a part of the term had expired. *Ibid.*

7. But in order to make them liable for the interest, the deposits must have exceeded one-quarter of the capital for the whole quarter. *Ibid.*

8. The bill, entitled "An act designating and limiting the funds receivable for the revenues of the United States," forbids the receipt of any bank notes, except of such specie-paying banks as shall from time to time conform to certain conditions therein mentioned in regard to small bills, and restrains the Secretary of the Treasury from making any discrimination in this respect between the different branches of the public revenue. [The above-mentioned bill passed both houses of Congress at the close of President Jackson's second term, but was retained in his hands until after the adjournment of Congress and thus failed to become a law.] *Opinion of March* 3, 1837, 3 Op. 172.

9. No part of the moneys deposited with the States should be called for by the Secretary of the Treasury except to meet such wants of the Treasury, under appropriations made by law, as may exist after exhausting the five millions reserved in the Treasury by the deposit act; yet a requisition may be made before the Treasury shall be actually exhausted. But in such case the time of payment to be named should be about the time when the available means on hand will have been exhausted. *Opinion of May* 22, 1837, 3 Op. 227.

10. Under the order of the Treasury Department, approved by the President on the 5th October, 1833, disbursing officers may legally keep the public moneys intrusted to them on deposit in the banks heretofore selected by the Treasury, and which now have the public money. *Opinion of May* 26, 1837, 3 Op. 233.

11. Disbursing officers may legally make special deposits of their funds in non-specie-paying banks, if so directed by the President,

where they will agree to receive the funds in that way. *Ibid.*

12. Any bank not restrained by its charter or other statutory enactments, nor by judicial process, from receiving special deposits, is competent to enter into a contract for the safekeeping and return of a special deposit in such way and on such terms as may be agreed on. *Ibid.*

13. Moneys collected for customs and deposited to the credit of the Treasury, but not actually brought into the Treasury by covering warrants, are not so blended with the moneys in the Treasury as to require a special appropriation by law, in order to apply them to the payment of current expenses, but may be applied as if they had been retained in the hands of the collectors. *Opinion of June* 10, 1837, 3 Op. 244.

14. All banks are disqualified to be selected as banks of deposit, under the act of June 23, 1836, chap. 115, which shall have issued or paid out any note or bill of their own or other banks of a less denomination than $5. *Opinion of July* 13, 1838, 3 Op. 341.

15. The act of June 23, 1836, chap. 115, authorizes only the selection of banking corporations chartered by the acts of the legislatures of the different States, &c., as depositaries, plainly excluding private banking associations and such associations as the North American Trust and Banking Company. *Opinion of Nov.* 17, 1838, 3 Op. 385.

16. The Bank of America having paid out bills of other banks of a denomination less than $5, has incapacitated itself from being a depository of the public money under the provisions of the act of June 23, 1836, chap. 115. *Opinion of Feb.* 4, 1839, 3 Op. 411.

17. An agent of the Government cannot require it to receive the credit of a bank, or any other third party, in the place of that of himself and his sureties. *Opinion of Feb.* 27, 1854, 6 Op. 314.

18. A bank cannot lawfully take public funds which have been deposited with it, knowing them to be such, and divert them from a public debt to the payment of the private debt of the public agent, or to a debt contracted by him in violation of law and of his duty to the Government. *Ibid.*

19. A debtor, in paying money to a bank, has the right to prescribe to which of two existing debts it shall be credited. *Ibid.*

20. Where a disbursing agent of the United States had paid public money into a bank, the Government will not undertake to settle incidental matters of controversy between him and the bank, but leaves all such questions to the courts of justice. *Ibid.*

21. Where a sum of money, standing in the name of A, had been enjoined in a suit in equity by B, and by due order, not appealed, the injunction was dissolved as to a part of said sum, and its payment ordered to C: *Held*, that the Secretary of the Treasury might lawfully pay to C according to such order. *Opinion of May* 14, 1854, 6 Op. 460.

22. The Secretary of the Treasury has authority to deposit the moneys received by the sale of bonds under the acts of July 14, 1870, chap. 256, and January 14, 1875, chap. 15, with public depositaries designated and selected by him under the provisions of section 5153 Rev. Stat., taking such security as the statute requires. *Opinion of Aug.* 30, 1877, 15 Op. 359.

23. The Secretary of the Treasury has authority, under section 3699 Rev. Stat., to fix a currency price for disposing of gold within a limited period, subject to his power at any time to terminate the period for which the limit was made, or to change such price so as to conform to the market rate. His authority to dispose of the gold is subject to no limitation as to amount, except that which is imposed by the same section. *Opinion of Dec.* 17, 1877, 15 Op. 413.

PUBLIC PAPERS.

Suggestions as to the method of disposing of useless papers appertaining to the Treasury Department. *Opinion of Dec.* 31, 1856, 8 Op. 280.

PUBLIC WORKS.

1. The oversight and inspection of a public work, requiring science and skill to construct it, is the appropriate duty of an engineer, as also the disbursement of public moneys applicable to any such work about the execution of which an engineer may be engaged. *Opinion of July* 31, 1860, 9 Op. 463.

2. The word "*plan*," in all statutes and contracts concerning buildings and public works, when not otherwise defined, means a draught, *sketch*, *plot*, or *representation* of anything on a plane surface, and not a *scheme*, *project*, or *contrivance* of the mind, not put on paper or otherwise made visible. *Ibid.*

3. The "*superintendence*" of a work means its *oversight*, *direction*, *care*, or inspection, and does not imply the power of contracting for the work or paying the hands. *Ibid.*

4. Where Congress appropriated a sum of money for the completion of a public work, to be expended according to the plans of a particular officer and under his superintendence: *Held*, that the statute was fully executed by an order appointing *another* officer chief engineer of the work, and requiring it to be constructed under the superintendence of the officer named in the statute, and according to *his* plans and estimates. *Ibid.*

PUGET SOUND AGRICULTURAL COMPANY.

1. The *proviso* to the appropriation made by the act of February 21, 1871, chap. 61, for paying to the British Government the last installment of the amount awarded by the commissioners under the treaty of July 1, 1863, in satisfaction of the claims of the Puget Sound Agricultural Company, which requires all taxes legally assessed upon property of that company covered by the award to be satisfied, or the amount thereof to be withheld from the sum appropriated, is applicable only to such taxes as have been imposed by the laws of the United States. *Opinion of Aug.* 7, 1871, 13 Op. 503.

2. Accordingly, taxes assessed upon the property of the company by the authorities of Pierce County, Washington Territory, under the Territorial laws, should not be so withheld. *Ibid.*

PURCHASE OF LAND.

See also CESSION OF JURISDICTION; LANDS ACQUIRED FOR PUBLIC USES.

1. A legislative act of a State consenting to the purchase of land within the same by the United States, for a specific purpose, expressly ceding jurisdiction, is not rendered insufficient by providing, in addition, that the Federal jurisdiction shall cease with the proposed use, and that meantime lawful process of the courts of the State may continue to be served within the limits of the land, jurisdiction of which has been ceded to the United States. *Opinion of Feb.* 12, 1857, 8 Op. 387.

2. Construction of a legislative act of the State of North Carolina, consenting to the purchase, by the United States, of land within the same for the site of a marine hospital. *Opinion of Feb.* 13, 1857, 8 Op. 388.

3. The act of the legislature of Georgia giving consent to the purchase of Blythe Island in that State for naval purposes is sufficient to authorize expenditure of money in its purchase. *Opinion of Nov.* 23, 1857, 9 Op. 129.

4. There is nothing in the Constitution which prohibits the United States purchasing land within a State without the consent of the State legislature; but when land is purchased by them in a State without such consent the United States cannot exercise "exclusive legislation" over the place. *Opinion of May* 6, 1861, 10 Op. 35.

5. The joint resolution of Sept. 11, 1841, does not forbid the payment of the purchase money of any site or land acquired for the purpose of erecting public buildings, before the consent of the legislature of the State is given to the purchase; but it does prohibit the expenditure of public money upon the improvement of the land by the erection thereon of the needful public buildings until that consent is given to the purchase. *Ibid.*

6. That resolution does not require the Attorney-General to inquire into and report upon the fact in question, whether the State in which the land lies has consented to the purchase. *Ibid.*

7. If the legislative act of the State wherein the land lies amounts to a consent to the purchase of the property by the United States, any exceptions, reservations, or qualifications contained in the act are void. *Ibid.*

8. There is nothing in the joint resolution of September 11, 1841, that forbids the purchase of land encumbered by outstanding liens which have not yet matured; but in such case the Department making the purchase should stipulate with the vendors that the amount of purchase money necessary to pay off the in-

ices shall be withheld until they are
en, if they are discharged by the ven-
e purchase money so withheld shall be
, if not then discharged by the vendors,
retained purchase money shall be ap-
y the Government to their payment.
of Oct. 4, 1862, 10 Op. 353.
e act of February 20, 1863, chap. 43,
opriating a sum of money "for perma-
fenses at Narragansett Bay," does not
authorize the purchase, on account of
ted States, of a tract of land as a site for
sed fort at the place mentioned in the
Opinion of April 20, 1865, 11 Op. 201.
onstruction and effect of the seventh
of the act of May 1, 1820, chap. 52.

he provision in the act of March 3,
ap. 134, making an appropriation for
ole dam, impliedly authorizes the pur-
with the approval of the Secretary of
such land as is necessary for the con-
n of the dam. *Opinion of March* 27,
5 Op. 212.
ayment of the purchase money for the
ay be made, though the legislature of
e has not consented to the purchase.
355 Rev. Stat considered in connec-
th section 1838 Rev. Stat. and con-
Ibid.
he discretion given by the act of May
, chap. 88, to acquire, either by pur-
by condemnation, a lot of ground in
of Fall River, Mass., suitable for a
a public building, does not extend to
isition of "adjoining land" referred
e act of March 3, 1879, chap. 182.
thority to "purchase" given by the
ct does not include authority to ac-
condemnation. *Opinion of May* 14,
Op. 327.
enerally, in statutes as in common
word "purchase" is employed in a
t technical, only as meaning acquisi-
greement with and conveyance from
ier, without governmental interfer-
bid.
acquiring a site for a movable beacon
ight, under the appropriation made
by the act of March 3, 1879, chap.
purchase from the owner of the beach
rpetual right to occupy such parts
thereof for that purpose as circumstances may from time to time require, is sufficient. *Opinion of May* 16, 1879, 16 Op. 329.

PURPRESTURE.

1. The erection, by third parties, of any structure encroaching on a public pier constructed by the United States for the improvement of a harbor, is an act of purpresture. *Opinion of Sept.* 22, 1853, 6 Op. 128.

2. Such an act of purpresture, that is, unlawful appropriation of, or encroachment on, a public right of this sort, whether pier, port, navigable water, or the like, being the usurpation of public franchises or property by private persons, is in general subject to various legal remedies; that is to say, the purpresture contemplated or commenced may be prevented and arrested, or if completed it may be removed and abated, in appropriate forms of law. *Ibid.*

QUARANTINE.

1. The President cannot cause a quarantine to be established at Alexandria, but the common council of that city have power to do so. *Opinion of Sept.* 5, 1829, 2 Op. 263.

2. They have full power to pass all laws which may be requisite to the preservation of the health of the inhabitants, to the prevention and removal of nuisances, to enforce such laws by penalties, and to appoint all officers necessary to carry them into operation. *Ibid.*

3. To enable them to give full effect to this power, jurisdiction has been granted them over the harbor of Alexandria, and over all vessels arriving there, or being in the harbor, or lying at anchor below Pearson's Island, and within the District of Columbia; and to prevent and remove all nuisances and such other substances or things on board of any such vessel as may be prejudicial to the health of the inhabitants. *Ibid.*

RANK.

See ARMY, IV, V, X; NAVY, III, X.

RANSOM-MONEY, ETC.

See also PRIZE.

The flag officer, fleet captain, and divisional commanders of a fleet are respectively entitled, under the act of June 30, 1864, chap. 174, to the same interest in ransom-money, salvage, and bounty-money accruing to any vessel of the Navy, being one of a fleet or squadron, that they would have in prize-money in a like case. *Opinion of Aug.* 24, 1865, 11 Op. 326.

REBATE.

See CUSTOMS LAWS, IX.

REBELLION.

See also CONFISCATION.

1. Advice to the President as to the course the Government should take with reference to the massacre by the rebels of colored Union soldiers at the capture of Fort Pillow. *Opinion of May* 4, 1864, 11 Op. 43.

2. By the terms of the surrender to General Grant of the army under the rebel General Lee on the 9th of April, 1865, the officers of that army who resided before the rebellion in the loyal States, and went to Virginia or elsewhere and entered into the rebel service, are not entitled to return to their former homes in the loyal States. *Opinion of April* 22, 1865, 11 Op. 204.

3. Persons in the civil service of the rebellion are not embraced by the terms of the surrender of that army. *Ibid.*

4. Officers of that army have no right after the surrender to wear their uniforms in public in the loyal States. *Ibid.*

5. Powers of the President in reference to the regulation of commercial intercourse and relations under the statutes of July 13, 1861, chap. 3, and July 2, 1864, chap. 225. *Opinion of May* 5, 1865, 11 Op. 219.

6. The proclamation of the President of June 13, 1865, removing restrictions generally upon trade with the States recently in insurrection, and announcing the suppression of the rebellion in Tennessee, is lawful under the statutes of the United States. *Opinion of June* 12, 1865, 11 Op. 269.

7. Reply of the Attorney-General to the resolution of the Senate relative to the prosecution of Jefferson Davis for treason. *Opinion of Jan.* 6, 1866, 11 Op. 411.

8. The proclamation of the President of June 24, 1865, removing restrictions upon trade west of the Mississippi, took effect on and from the day of its date. *Opinion of March* 14, 1866, 11 Op. 436.

9. The cessation of war and the peace proclamation of the President relieve a rebel officer from his parole and from military jurisdiction. *Opinion of March* 2, 1867, 12 Op. 120.

10. *Semble* that in the State of Mississippi the war for the suppression of the rebellion ended on the 2d of April, 1866. *Opinion of July* 22, 1876, 15 Op. 572.

RECEIPT FOR PAYMENT.

When the accounting officers of the Treasury, in settling the accounts of a disbursing officer of the United States, have allowed an alleged payment upon the genuine receipt of the party to which the money purports to have been paid, the latter cannot be suffered to claim the money of the Government in his own name on the pretense that he gave the receipt without actually receiving the money; and if he be aggrieved his remedy is against the disbursing agent of the Government. *Opinion of Nov.* 23, 1854, 7 Op. 40.

RECONSTRUCTION LAWS.

1. The questions arising upon the construction of the act of March 2, 1867, chap. 153, to provide for the more efficient government of the rebel States, and the supplementary act of March 23, 1867, chap. 6, submitted by the commanders of the military districts of the South to the President for his instructions, considered and determined by the Attorney-General. *Opinion of May* 24, 1867, 12 Op. 141.

2. The duties and powers of the boards of registration constituted by the act of March 23, 1867, considered. *Ibid.*

3. The powers and duties of the military commanders in the districts constituted by the act of March 2, 1867, chap. 153, considered and determined. *Opinion of June* 12, 1867, 12 Op. 182.

ıe jurisdiction of military commissions
hat act defined. *Ibid.*
.mmary of the points considered and
ned in the former opinion of the At-
General on this subject. *Ibid.*
September, 1868, J. W., a citizen of
not in the military or. naval service
United States, while under indict-
ı a court of that State and under arrest
t trial therein for murder, was brought
ı military commission at Austin, Tex.,
ed by the commanding general of the
ilitary district, under section 3 of the
ruction act of March 2, 1867, chap
1 was there tried for the same murder,
guilty, and sentenced to be hanged:
hat, by virtue of the provisions of
t, and in view of the peculiar political
ıs then existing between the State of
and the United States, and of other
stances presented in the case, the juris-
of the military commission was com-
nd that there is no legal obstacle to the
ion of the sentence. *Opinion of May* 9, 13 Op. 60.
he constitutionality and validity of the
ons of the act of March 2, 1867, ad-
to above, considered and affirmed. *Ibid.*
he oath prescribed by the act of July 2,
hap. 128, and by the act of July 19,
hap. 30, section 9, is not to be required
fficers of the State of Virginia, or mem-
the legislature elected under its new
ation, after Congress shall have approved
stitution and restored the State to its
place in the Union. *Opinion of Aug.* 9, 13 Op. 135.
efore Congress has thus acted, the mem-
the legislature so elected may come to-
organize, and do whatever is required
acts of Congress as preliminary to the
ruction of the State, without taking
h referred to; but they cannot, without
on of law, be allowed to transact any
s or assume any other function of a leg-
e, if the oath has not been taken by
Ibid.
The election of United States Senators
legislature chosen under the new consti-
of Virginia, is a part of the action con-
ted by Congress as preliminary to the
tion of the State to its full relation to
the Government of the United States as one of the States of the Union. *Opinion of Sept.* 25, 1869, 13 Op. 149.

11. A new apportionment for the election of members of the legislature of Mississippi, different from the apportionment provided in the constitution framed by the State convention and designed to be submitted to the people for adoption, cannot be made by the military commander there; nor can the article of that constitution, fixing the apportionment for members of the legislature, be separately submitted to the vote of the people. *Opinion of Oct.* 5, 1869, 13 Op. 156.

REFUND OF DUTIES.

See CUSTOMS LAWS, XIII; INTERNAL REVENUE, IX.

REGISTERS AND RECEIVERS.

See PUBLIC LANDS, XXXV.

REGISTRY OF VESSELS.

See COMMERCE AND NAVIGATION, I.

REGULATIONS.

See also ARMY, XXII; NAVY, XIII.

1. Provision of statute exists by which the statute regulations of the Army may, within certain limits, be altered by the Secretary of War, but there is no such provision in regard to the statute regulations of the Navy. *Opinion of April* 5, 1853, 6 Op. 10.

2. The power of adding to statute regulations, in so far as regards the Army, has been intrusted by Congress to the Executive, but not as regards the Navy. *Opinion of Jan.* 31, 1857, 8 Op. 337.

3. The same discrepancy exists in the military law of Great Britain. *Ibid.*

RELATIVE RANK.

See ARMY, V; NAVY, III, X.

RELIEF OF GEORGE MATTINGLY.

Consideration of a bill for the relief of George Mattingly, presented to the President for his approval. *Opinion of Aug.* 3, 1854, 6 Op. 636.

REMISSION OF FINES, PENALTIES, AND FORFEITURES.

See FINES, PENALTIES, AND FORFEITURES.

REMOVAL.

See ARMY, IX; OFFICE, IX.

REMOVAL OF CAUSES.

See COURTS, II.

REPRISAL.

See also INTERNATIONAL LAW, I.

1. The laws of nations do not allow of reprisals, except in case of violent injuries directed and supported by the State, or justice absolutely denied, *in re minime dubia*, by all the tribunals, and afterwards by the prince. *Opinion of April* 12, 1793, 1 Op. 30.

2. Where the judges are left free, and give sentence according to their conscience, though it should be erroneous, that would be no ground for reprisals. Upon doubtful questions different men think and judge differently; and all a friend can desire is, that justice should be as impartially administered to him as it is to the subjects of the prince in whose courts the matter is tried. *Ibid.*

REQUISITION FOR PAYMENT.

See also ACCOUNTING OFFICERS, III.

1. The requisitions of the Superintendent of Public Printing are to be made by him directly on the Secretary of the Treasury, and do not require to be approved by the Secretary of the Interior. *Opinion of Dec.* 14, 1853, 6 Op. 228.

2. Where a claim or account against the Government, arising in the military service, has been adjusted by the accounting officers of the Treasury, and the balance found due thereon certified by the Comptroller to the War Department for payment, the Secretary of War cannot lawfully withhold his requisition simply on the ground that the balance so certified is in excess of what the officers of his Department deem to be allowable. *Opinion of March* 25, 1869, 13 Op. 6.

3. Where the Comptroller's certificate is unaccompanied by the Auditor's action, or does not affirmatively (by recital or otherwise) show that the account has been acted upon by the latter, the head of Department to whom the balance is certified should withhold his requisition for payment until satisfactory evidence on that point is produced. *Opinion of Aug.* 2, 1876, 15 Op. 140.

4. The action of the Auditor need not be incorporated in the certificate of the Comptroller, nor form part of the same document. *Ibid.*

5. It is the duty of a head of a Department, after facts have been submitted under section 191 Rev. Stat. which, in his judgment, affect the correctness of a balance certified to him upon settlement of a claim by the proper accounting officers of the Treasury, and after the certificate has been returned by the Comptroller with the decision in the case reaffirmed, to issue his requisition for payment of the balance certified. *Opinion of Aug.* 19, 1876, 15 Op. 596.

6. Signing the requisition in such case under protest is without effect. *Ibid.*

RESERVATIONS.

See also INDIANS, III; PUBLIC LANDS, XXI.

I. *Indian.*

II. *Military.*

I. Indian.

1. The reservations to certain Indians, contained in the treaty of 20th October, 1832, with the Pottawatomies, excepted out certain lands from the general cession, which did not, therefore, pass; consequently the title thereto re-

nains as it was before the treaty. *Opinion of Sept.* 30, 1833, 2 Op. 588.

2. Being held under the original title, the occupants cannot convey them to individuals, but can only make a valid cession thereof to the United States. *Ibid.*

3. Where a reservee, entitled under the Choctaw treaty of Dancing Rabbit Creek (1830) to two sections of land—the one to include his improvement and the other to be a float—had built and paid for a house on section 31, in township 16, range 1 east, and had no other improvements in the nation, but resided with his mother on another lot: *Held*, that his residence with his mother does not deprive him of the right to the said section. *Opinion of March* 19, 1834, 2 Op. 17.

4. Under that treaty, where two reservees shall be found to have improvements on the same lot, the same may be divided, and the deficiency made up from contiguous land not otherwise appropriated. *Ibid.*

5. The President may properly give his consent and approval to the conveyance by will made by Indians La Gros and Waises-kea, his daughter, to General Tipton, to four sections of land, reserved to said La Gros in the treaty with the chiefs and warriors of the Miamies, concluded 23d October, 1826, subject to all legal questions in respect to the capacity and right to make conveyances by will, and to the execution, validity, and effect of those instruments. *Opinion of March* 29. 1834, 2 Op. 631.

6. Whether Indian reservees are capable in law of devising their reservations to third persons in any case, *quære*. *Ibid.*

7. The twenty-nine sections reserved to Creeks under the treaty of 24th March, 1832, may be lawfully located either before or after assignment thereof by the tribe; with this qualification in respect to locations made before such assignment, that should any of those sections be located to persons who possess improvements not already allotted to them under other provisions in the treaty, such persons shall be entitled to insist that the tracts assigned to them shall be located in such manner as to include their improvements. *Opinion of Dec.* 26, 1834, 2 Op. 696.

8. Transfers of Creek reservations by assignees whose assignments express them as a firm, are not valid when executed by one member thereof, but only when executed by all, unless the partner assigning exhibits authority to assign from all. *Opinion of March* 16, 1839, 3 Op. 423.

9. But where the reservee assigned to a firm, as to M., W., P. & Co., and the transfer by the firm was assigned in that manner, the assignment is valid, and the patent may issue to the assignee. *Ibid.*

10. Where there are two assignors, and the names of both to the assignment are in the same handwriting, the assignment is invalid as to him who did not sign, unless the other exhibits authority from him to sign. *Ibid.*

11. The approval of the President to a sale of a Choctaw reservation is required only to contracts between the Indian reservees and their vendees. *Opinion of May* 25, 1842, 4 Op. 37.

12. The patents ought to issue to the first vendees in trust for the equitable proprietors, or subsequent assignees, and bear on their face a declaration of trust. *Ibid.*

13. The President should confirm those sales of Creek reservations only where the law of the State of Alabama has been complied with—such having been the practice. *Opinion of July* 23, 1842, 4 Op. 75.

14. The former opinion (of July 23, 1842, 4 Op. 75), on new facts stated, and assurances that the practice has not conformed to the opinions of Attorneys-General Butler and Gilpin, reconsidered; and *held* that, in all cases where the provisions of the treaty of March 24, 1832, have been fulfilled, the sales shown to have been fair, and the consideration adequate, the sales may be confirmed, even though, under the law of Alabama, they may have been informal and irregular. *Opinion of July* 28, 1842, 4 Op. 77.

15. Congress did constitutionally confer original authority upon administrators to make sales, without reference to the law of Alabama. *Ibid.*

16. The names of assignors need not be written in full in assignments of Creek Indian contracts; and the fact that they do not import a consideration does not render them insufficient. *Opinion of Aug.* 17, 1842, 4 Op. 85.

17. The patents heretofore issued to the parents of Choctaw children, for such children, must stand for what they shall be found by the judiciary to be worth; but patents for reservations to Indian children, under the four-

teenth article of the Choctaw treaty of 1830, hereafter to be issued, should be made to the children and not to their parents; care being taken that they show on their face that they are issued to the children independently of their father, in fulfillment of the fourteenth article of that treaty. *Opinion of Nov.* 2, 1842, 4 Op. 107.

18. The treaty of 1817 with the Cherokees gave to the heads of Cherokee families an election to go or stay and become citizens; and until their election to stay the reservations do not vest in them or their children. *Opinion of Nov.* 21, 1842, 4 Op. 116.

19. The President has power to cause the lands reserved for orphans under the Choctaw treaty of Dancing Rabbit Creek of 1830, to be sold, and to cause patents to be issued to purchasers. He may, on application of the orphans for whom the provision was made, cause the proceeds of land located for them to be applied to some purpose beneficial to them; wherefore the sales already made of these lands are valid. *Opinion of May* 27, 1844, 4 Op. 326.

20. The commissioners to carry into effect the treaty with the Choctaws of 1830, called the treaty of Dancing Rabbit Creek, did not have authority to take proof of any claim in favor of an assignee of an Indian who transferred his claim within the five years mentioned in the ninth section of the act of August 23, 1842, chap. 187, inasmuch as they were expressly denied any authority to recognize or allow to an Indian, or to the assignee of an Indian, any claim which had been so assigned, in whole or in part. *Opinion of May* 20, 1845, 4 Op. 381.

21. The five per cent. Alabama stocks transferred from the Chickasaw to the Choctaw fund in compliance with the treaty of 24th March, 1837, between those nations did not fully come up to what the Choctaws might have reasonably required. *Opinion of Aug.* 1, 1845, 4 Op. 419.

22. But as the consent of the Senate was and is requisite to any transfer or investment for them, it will be requisite to the making up of the deficiency. *Ibid.*

23. The Cherokees remaining in the States of North Carolina and Tennessee are not entitled to the commutation for removal and subsistence given by the eighth article of the Cherokee treaty of December, 1835, to those who have removed west of the Mississippi. *Opinion of Sept.* 19, 1845, 4 Op. 435.

24. They can only receive their due portion of personal benefits accruing under the treaty for their claims, improvements, and *per capita*, whenever an appropriation shall have been made to carry it into effect. *Ibid.*

25. As the official acts of President Van Buren and his successor in office, in relation to the confirmation of sales of reservations under the Choctaw treaty of Dancing Rabbit Creek of 1830, were predicated on a construction of that instrument which forbids certain sales, and as certain questions arise which ought to be adjudicated, it is recommended that a case to test the validity of sales made by the commissioner be brought before the Supreme Court. *Opinion of May* 2, 1846, 4 Op. 495.

26. The President's consent to sales of land reserved to the Indians by the Pottawatomie treaty of 17th October, 1826, and the Miami treaty, concluded on the 23d of the same month, is only necessary in cases where the sales shall have been made by the reservees. *Opinion of Aug.* 28, 1846, 4 Op. 530.

27. Where the reservees shall have died, and sales are made under an order of court granted pursuant to the laws of the State in which the lands are situated, the President's consent is not necessary to their validity. *Ibid.*

28. Those treaties not only extinguished the Indian right of occupancy, but granted the reserved lands as effectually to all interests and purposes as if patents had been issued to the so called reservees; and as the State laws are operative upon lands thus held in fee-simple, and have applied to those in question by causing their transfer for the payment of the debts of their decedent owner, the title of the purchaser is perfect without the President's consent. *Ibid.*

29. But as the rights of the heirs cannot be affected injuriously by the giving of the Executive consent, and as the sale in this case appears to have been fairly made and for a satisfactory price, and as it may possibly relieve the title from doubt, and thereby prevent litigation, it may nevertheless be given. *Ibid.*

30. The certificate of an award to a claimant under the treaty of 1835–'6 with the Cherokees cannot be so amended as to include a claim, which was presented and allowed under the thirteenth article of that treaty, within the

third article of the "supplementary articles" thereto. *Opinion of June* 17, 1847, 4 Op. 598.

31. All Cherokee reservees who were obliged to abandon their reservations by the laws of the State in which they were situated, were expressly provided for in the thirteenth article of the treaty, and expressly excluded from the third article of the supplement. *Ibid.*

32. Neither the wife of a white man, who entered a reservation to her under the Cherokee treaty of 1817, and within the limits of the grant of North Carolina to the Cherokees in 1783, and the treaty of 1819 with the Cherokee agent, in her right, nor her children, are entitled to compensation for the value of such reservation, if it appear that the same were voluntarily sold and abandoned prior to the ratification of the treaty of 1835–'36. *Opinion of July* 22, 1847, 4 Op. 615.

33. The reservation in this case having been sold and abandoned long before the ratification of the said treaty, the claim made for its value ought to be rejected. *Ibid.*

34. The lands reserved to certain half-breeds of the Kansas Nation of Indians, named in the sixth article of the treaty of June 3, 1825, and afterwards surveyed and allotted to them respectively in accordance with the provisions of the treaty, are lands the claims to which were "confirmed by law" before the passage of the act of December 22, 1854, chap. 10, and, as such, may be patented under that act to the reservees. *Opinion of July* 20, 1863, 10 Op. 508.

35. The act of May 26, 1863, chap. 61, which explicitly confirms the title of the persons named in the sixth article of the treaty of June 3, 1825, with the Kansas Indians, was entirely superfluous as an act of confirmation; for the title reserved and guaranteed to the half-breeds by the treaty was a perfect title, and did not need the aid of any subsequent act of Congress to impart to it validity or strength. *Ibid.*

36. The words "confirmed by law" mean confirmation by the act of that power which, under our system, enacts law, and not confirmation by mere construction of law; and the act of December 22, 1854, chap. 10, authorizes the issue of a patent in every case where, by valid enactment, the law-making power had before its date declared the title to be in the person named. *Ibid.*

37. A confirmation by treaty is a confirmation by law, within the meaning of the act of 1854; inasmuch as a treaty is to be regarded as an act of the legislature, whenever it operates without the aid of a legislative provision. *Ibid.*

38. The stipulations in the sixth article of the treaty of June 3, 1825, with the Kansas Indians, in favor of the half-breeds, were not mere voluntary grants of lands, but guarantees of the existing right and title of the persons named to the land set apart to them. *Ibid.*

39. The President has power, under the second section of the act of June 12, 1858, chap. 155, on the requisition of the Commissioner of Indian Affairs, with the approval of the Secretary of the Interior, to direct the military force to co-operate with the proper Indian agent in effecting the removal of intruders from the tribal reservations in Kansas. *Opinion of Sept.* 20, 1866, 12 Op. 51.

40. In the absence of authority conferred either by treaty or by statutory provision, it is not competent to the Secretary of the Interior to set apart a portion of the public domain in Washington Territory for the purpose of an Indian reservation. *Opinion of Feb.* 8, 1873, 14 Op. 181.

41. Under the provisions of section 2149 of the Revised Statutes, the Commissioner of Indian Affairs, with the approval of the Secretary of the Interior, and also the superintendent of Indian affairs, Indian agents, and sub-agents, may remove from said reservation all persons found thereon contrary to law; and the President is authorized to direct the military force to be employed in effecting their removal. *Opinion of Sept.* 1, 1874, 14 Op. 452.

42. An order directing the military to be thus employed need not be issued by the President by his own hand; it would be sufficient if issued by the Secretary of War. *Ibid.*

43. The title of the American Board of Commissioners for Foreign Missions to the missionary station within the limits of the Nez Percé Indian reservation, derived under the acts of August 14, 1848, chap. 177, and March 2, 1853, chap. 90 (assuming that a title passed to said board by virtue of those acts), was then, and has ever since continued to be, subject to the Indian right of occupancy in the Nez Percé tribe of Indians; and until this Indian right is extinguished, the present holder of that title has no right, merely by virtue of such title, to

enter upon and take possession of the premises. *Opinion of May* 3, 1875, 14 Op. 569.

44. L., who claimed title to the tract of land included by said station, as assignee of said board, recovered judgment by default in the Territorial court in an action to recover possession of the premises brought against an Indian agent occupying the same, and obtained actual possession thereof under a writ issued upon said judgment: *Held*, that the judgment determined nothing adverse to the Indian right; that the writ founded on such judgment was ineffectual to give L. legal possession of land to which the Indian right still adheres; and that in entering upon the reservation thereunder he was simply an intruder, and may be summarily removed therefrom in the mode provided by section 2118 of the Revised Statutes. *Ibid.*

45. On April 27, 1869, the lands within the limits of Camp Wright, in California, were set apart as a military reservation by order of the President. That order was revoked by a subsequent order of the President, dated July 26, 1876, which reserved said lands for the use and occupancy of the Indians of the Round Valley Indian reservation. The limits of the latter reservation were defined by and under the act of March 3, 1873, chap. 333, and the lands of Camp Wright lie outside of those limits. *Held*, that the limits of the Indian reservation cannot be enlarged by the President by annexing said lands thereto; but that the President may permit said lands to be used in connection with such reservation, so long as no action is taken by Congress for their disposal. *Opinion of Aug.* 10, 1878, 16 Op. 121.

46. By the act of June 14, 1880, chap. 211, an appropriation is made for the construction of a dam at Lake Winnibigoshish, with a *proviso* "that all injuries occasioned to individuals by overflow of their lands shall be ascertained and determined by agreement or in accordance with the laws of Minnesota, and shall not exceed in the aggregate $5,000." The land to be overflowed, as is ascertained by actual survey, lies within the limits of the reservation of the Chippewa Indians, secured to that tribe by the treaty of February 22, 1855. *Held*, that the said *proviso*, being in terms limited to the lands of individuals, cannot be extended to lands of the Chippewa *tribe*, and that Congress has not otherwise, in said act, manifested an intention to exercise the right of eminent domain in or upon lands in said Indian reservation, or to authorize the overflow of any part of that reservation, or the taking of timber or materials therefrom. *Opinion of Aug.* 13, 1880, 16 Op. 553.

II. Military.

47. Decision as to the quantity of land to be reserved for public use, and the places where to be located, rests in the discretion of the President, subject to such regulations as may from time to time be provided by law, either as to the particular public use, the quantity, or the subsequent disposal thereof for private use. *Opinion of Oct.* 15, 1853, 6 Op. 157.

48. At present the statute limitation as to quantity in the Territory of Oregon is not exceeding six hundred and forty acres for forts and twenty acres for any other public use. Subject to this condition, the military reservation of Fort Vancouver in that Territory is valid, notwithstanding any pre-existing donation claim of an inhabitant of the Territory, and notwithstanding the provisional government of Oregon had located the county seat of justice at Fort Vancouver. *Ibid.*

49. The Chicago and Rock Island Railroad Company and Railroad Bridge Company cannot lawfully enter upon and use, for the purpose of a road, or for any other object, the military reservation of Rock Island, under pretense of authority from the State of Illinois. *Opinion of Aug.* 21, 1854, 6 Op. 670.

50. An act of Congress giving to railroad companies a right of way through the public lands does not apply to or include the military reservation of Rock Island. *Ibid.*

51. Under the act of March 3, 1819, chap. 88, authorizing the Secretary of War to cause to be sold such military sites as may become useless for military purposes, the Secretary has power to annul and set aside a sale made by commissioners appointed to carry the act into execution at any time before final confirmation by him, for any just cause. *Opinion of March* 17, 1859, 9 Op. 298.

52. The Leavenworth Coal Company, on payment of the purchase money of the land embraced by their lease, will be entitled to a patent therefor in fee, and with it a grant also of the exclusive right of mining the coal un-

lying the rest of the military reservation, the period limited by the terms of the lease horized to be extended by the act of July 1868, chap. 199. *Opinion of Oct.* 7, 1868, Op. 504.

3. The Secretary of War has authority, ler the resolution of Congress of May 4, '0, to carry out the agreement entered into him respecting the military reservation at rt Snelling, Minnesota, by making convey- es and accepting releases as provided in t agreement. *Opinion of Nov.* 30, 1870, 13 . 345.

4. In view of the circumstances appearing the case considered, it is recommended that claim of the Roman Catholic Mission of nt James to certain land at or near Fort ncouver, Washington Territory, used by United States for military purposes, be re- ted, and possession of the premises be re- ned by the Government, until the Mission ll have established its title by the judg- nt of a competent court of law. *Opinion of* y 3, 1871, 13 Op. 467.

5. Jurisdiction over the lands lying within limits of the military reservation of Fort avenworth passed from the United States to State of Kansas under the operation of the of June 29, 1861, chap. 20, admitting that te into the Union; and to restore exclusive isdiction to the United States over the same, ession of jurisdiction by the State is neces- y. *Opinion of April* 19, 1872, 14 Op. 33.

6. Buildings erected on military reserva- ns by post-traders, under a license from the r Department, for the purposes of trade, are to be regarded as such buildings would be laced there by trespassers; that is to say, constituting a part of the realty. *Opinion Oct.* 3, 1872, 14 Op. 126.

7. A trader, when he removes from his post military reserve, has a right to remove the ldings which were erected thereon by him ler such license, and is at liberty to dispose the materials thereof as his own property. *d.*

8. But the license to erect such buildings ng purely personal to the trader, does not ry with it any right to lease or convey the ie to others for their occupation and use, hout the permission of the military author- s; his rights are confined solely to that of removing the buildings from the premises. *Ibid.*

59. The provisions of the acts of July 20, 1868, chap. 179, and July 27, 1868, chap. 268, granting to railroad companies rights of way through the Fort Leavenworth military reservation, are to be construed strictly as against the grantees of such rights. The grant made by those acts does not impart to the railroad companies referred to the right to establish cattle yards or pens, or build structures for a like purpose, either in the roadway or elsewhere upon said reservation. *Opinion of Nov.* 5, 1872, 14 Op. 135.

60. The military post of Fort Reading, in California, is within the operation of the sixth section of the act of June 12, 1858, chap. 156, reserving from sale or pre-emption lands that belong to useless military sites until otherwise ordered by Congress. *Opinion of May* 24, 1873, 14 Op. 244.

61. The "Chicago, Detroit and Canada Grand Trunk Junction Railroad Company" has acquired under the act of February 8, 1859, chap. 26, a valid right to use, or easement in, so much of the Fort Gratiot military reservation as is described in the deed to that company executed by the Secretary of War on the 8th of March, 1859, for railroad purposes. *Opinion of Oct.* 18, 1873, 14 Op. 320.

62. The "Port Huron Street Railway Company" has no right by virtue of the grant made thereto by the Secretary of War under the joint resolution of January 31, 1866 [No. 5], to use any part of the land within said reservation which is covered by the right or easement held by the former company. *Ibid.*

63. Where certain land (now constituting part of the Fort Porter military reservation at Buffalo, N. Y.) was granted to the United States under an act of the legislature of New York, dated February 28, 1842, "for military purposes, reserving a free and uninterrupted use and control in the canal commissioners of all that may be necessary for canal and harbor purposes": *Held*, that the right of the State, under the reservation in the grant, is limited by the purposes of the grant, and that the State is not entitled to use the land for any purpose, if thereby its use for the military purposes of the United States will be interfered with; yet that the State has a right to use so much of the

land as may be necessary for canal and harbor purposes, where such use does not interfere with its use for the military purposes of the Government. Accordingly, *held*, that the Secretary of War may permit the State of New York to use so much of the premises for canal purposes as will not interfere with the use thereof for military purposes. *Opinion of Dec.* 14, 1880, 16 Op. 593.

RESIGNATION.

See ARMY, VII; OFFICE, X.

RES JUDICATA.

See also CLAIMS, XXI, XXII.

1. Where a claim has been rejected by the accounting officers and their decision has been confirmed by the Secretary of War, on appeal, it is doubtful whether the successor of the latter can review his decision. The party may carry his appeal to the President, who may affirm or reverse the decision. If he affirm, the claimant has no remedy except at the hands of Congress, the decision being conclusive, so far as the Executive is concerned, unless there shall have been some mistake in matters of fact arising from errors in calculation or the absence of material testimony afterwards discovered. *Opinion of Sept.* 10, 1831, 2 Op. 463.

2. Unless claims finally decided by the proper Department shall in general be considered *res judicata*, every change in the officers thereof will produce a new hearing of the same, and the accounts of the Government will remain open and undecided. *Ibid.*

3. The decision of the question as to the payment of commutation to the Cherokees having been concurred in by two successive Secretaries of War, and also considered by one house of Congress and acted on there, ought properly to be regarded as *res judicata* before the Executive. *Opinion of Sept.* 26, 1841, 3 Op. 657.

4. A subject once disposed of by the proper executive Department, except under peculiarly strong circumstances, ought to be regarded as settled. *Stare decisis* is a most salutary rule for the executive department in cases of claims. *Opinion of Oct.* 18, 1844, 4 Op. 341.

5. Where a final decision has been made by the proper Department against one who claims to be a public creditor, such decision cannot be opened after a change has taken place in the head of the Department. *Opinion of June* 4, 1857, 9 Op. 33.

6. But a deduction from the pay of a contractor, made by the Auditor and Comptroller of the Treasury, merely upon the *ex parte* recommendation of the Postmaster-General, is not a judgment against the contractor. *Ibid.*

7. It appearing that the same question proposed in the case of Rear-Admiral Goldsborough was considered in the year 1867 by the then President and Cabinet, including the Attorney-General, and decided by them; that the decision was adopted by the Secretary of the Navy, and has been acted upon up to the present time; that application was made for legislation to change the result announced; and that Congress has not evinced any dissatisfaction with such result, or an intention to modify it: *Recommended*, that the decision mentioned be followed as a rule already settled, without a new inquiry into the validity of the reasons upon which it is founded. *Opinion of April* 26, 1869, 13 Op. 33.

8. The deliberate decision of a former administration, of a question involving private rights and interests (no new facts being shown to exist which were not known when that decision was made), cannot with propriety be reconsidered by its successors. *Ibid.*

9. A decision made by a former head of Department, after having heard the parties in interest, and after careful and thorough consideration of the case—there being no allegation that any material fact can be shown which was not before him—should be regarded by his successor as final, and be left undisturbed. *Opinion of March* 7, 1871, 13 Op. 387.

10. The principle that the final decision of a matter before the head of a Department is binding upon his successor in the same Department, under certain well-defined exceptions, has been so frequently declared that it is now entitled to be regarded as a settled rule of administrative law. *Opinion of June* 20, 1871, 13 Op. 457.

11. The rule that a final decision, upon a knowledge of all the facts, made by an officer

authorized to decide on claims against the Government, is not to be reopened and reviewed by his successors in office, except for the correction of mistakes such as errors in calculation, &c., reaffirmed, and applied to cases acted upon by the Commissioner of Internal Revenue under the forty-fourth section of the act of June 30, 1864, chap. 173. *Opinion of July* 16, 1873, 14 Op. 275.

12. After a review of the history of the case of Lieut. Col. B. S. Roberts, which is founded upon the alleged invalidity of an appointment in the Army made above twenty-seven years ago: *Advised*, that the case ought to be considered as finally determined by the decisions of the executive department of the Government heretofore given, and the action of the Senate heretofore had, affirming, directly or indirectly, the validity of that appointment, and should accordingly be regarded as *res adjudicata*. *Opinion of Dec.* 18, 1873, 14 Op. 344.

13. Where an application was made to the Secretary of the Interior to review a decision of his predecessor, but it did not appear that any new facts in the case were presented, nor that any change in the law had taken place since the decision was made: *Held*, that the principle of *res judicata* applies, and *advised*, that the former decision be adhered to. *Opinion of June* 15, 1877, 15 Op. 315.

14. Soon after the passage of the act of May 18, 1872, chap. 172, H. filed in the Treasury Department, under the fifth section of that act, a claim for the proceeds of 2,835 bales of cotton. In March, 1875, the then Secretary of the Treasury (Bristow) finally acted thereon, allowing the claimant a certain sum as the proceeds of 104 bales, and formally rejecting the remainder of the claim. Subsequently the claimant made application to the next succeeding Secretary (Morrill) for a reopening of the case; which was denied. Application for a reopening being again made, upon substantially the same grounds as before: *Held*, that the action heretofore had thereon by the Treasury Department should be deemed conclusive, and that the case cannot legally and with propriety be reopened by the present Secretary. *Opinion of Jan.* 11, 1878, 15 Op. 423.

15. Upon consideration of the facts set forth in the opinion: *Held*, that the settlement of the claim of the State of Pennsylvania for reimbursement of funds expended for payment of militia in the service of the United States, authorized by the act of April 12, 1866, chap. 40, was a matter intrusted by that act to the Secretary of War, and that the award which was made by the Secretary in favor of the State on June 16, 1866, must be treated as *res adjudicata* and binding upon his successors. But *held, further*, that if an error appear in the settlement which is merely clerical in its character, or which involves a matter of computation only, the Secretary of War may now reopen the same to the extent of rectifying such error, but no further. *Opinion of May* 18, 1880, 16 Op. 489.

RETIRED OFFICER.

See ARMY, XV; MARINE CORPS, IV; NAVY, IX.

REVENUE-MARINE SERVICE.

1. The Secretary of the Treasury is not restrained to the use of sails for the revenue service, but may adopt such of the improved modes of navigation as he shall deem indispensable at this time. *Opinion of Feb.* 21, 1843, 4 Op. 145.

2. He is, however, restricted as to the amount and description of military and naval force, and (by the equity of the act) in regard to the sum to be laid out in building and equipping the vessels. *Ibid.*

3. D., a third lieutenant in the Revenue-Marine Service, was suspended in October, 1878, by the President, who, during the ensuing session of the Senate, submitted his name thereto for its consent to his removal. The session of the Senate ended without any action by that body upon the removal. *Held*, (1) that officers of the Revenue Marine are in the civil service of the Government as contradistinguished from the naval and military service (reaffirming opinion of November 13, 1877, 15 Opin. 396), and their suspension and removal are governed by the law applicable to civil officers; (2) that upon the adjournment of the Senate, D., by virtue of section 1768 Rev. Stat., became reinstated as an officer of the Revenue-Marine. *Opinion of March* 22, 1879, 16 Op. 288.

4. Upon the facts presented, the cadet in the

Revenue-Marine Service who was appointed after the suspension of D., under the act of July 31, 1876, chap. 246, is not affected by D.'s reinstatement; there having been at the time of the appointment an actual vacancy in the service which the Secretary of the Treasury was authorized thus to fill. *Ibid.*

REVISED STATUTES.

The following sections of the Revised Statutes are construed, commented on, cited, or referred to:

Sec. 1....15 Op. 230, 233, 594.
28....16 Op. 274.
30....16 Op. 274.
34....16 Op. 274.
161....15 Op. 343.
169....15 Op. 5, 6.
177....16 Op. 596.
178....15 Op. 458; 16 Op. 596, 617.
179....15 Op. 458; 16 Op. 596.
180....15 Op. 458; 16 Op. 596.
191....15 Op. 143, 192, 193, 195, 196, 197, 198, 596, 627, 628.
201....15 Op. 6.
213....15 Op. 343.
216....15 Op. 293.
235....15 Op. 6.
256....15 Op. 135, 136.
269....15 Op. 194.
273....15 Op. 41, 141, 194, 196.
277....15 Op. 41, 42, 141, 194.
299....16 Op. 99, 100, 101, 102.
300 B..15 Op. 36.
313....15 Op. 194.
317....15 Op. 194.
322....15 Op. 6.
327....15 Op. 6.
351....15 Op. 6, 132.
355....15 Op. 213; 16 Op. 372, 391, 414, 543.
356....15 Op. 138, 461, 575; 16 Op. 404.
357....15 Op. 461.
361....15 Op. 461.
363....15 Op. 169.
366....15 Op. 169.
398....15 Op. 462.
403....15 Op. 484.
404....15 Op. 484.
406....15 Op. 485.
409....16 Op. 484, 485.
421....16 Op. 656, 657.
432....16 Op. 127.
459....15 Op. 343.
460....15 Op. 343.
461....15 Op. 343.
490....15 Op. 541.
491....15 Op. 541.
492....15 Op. 541, 544, 548, 549.
515....15 Op. 343.
574....15 Op. 578.
753.... 15 Op. 181.
771....16 Op. 99, 101.
793....16 Op. 538, 539, 540.
802....15 Op. 343.
825....15 Op. 388, 566, 567.
827....15 Op. 277; 16 Op. 99, 101, 10
828....15 Op. 566, 567.
829....14 Op. 681, 684; 15 Op. 347, 53 566, 567; 16 Op. 165, 166, 16 168, 169.
834....16 Op. 102.
838....15 Op. 523.
850....16 Op. 113, 147.
853....15 Op. 282, 595, 633.
854....15 Op. 282, 283, 633.
856....15 Op. 387.
882....15 Op. 343.
989....14 Op. 562.
1024....15 Op. 635.
1063....15 Op. 26; 16 Op. 479.
1094....15 Op. 408; 16 Op. 14, 15, 16
1096....16 Op. 551, 552.
1112....16 Op. 451.
1113....15 Op. 279.
1119....15 Op. 161.
1131....16 Op. 638.
1132....16 Op. 16.
1170....16 Op. 605.
1182....16 Op. 419.
1191....15 Op. 211; 16 Op. 39.
1205....14 Op. 501.
1216....16 Op. 9.
1219....15 Op. 334; 16 Op. 652, 655.
1222....14 Op. 573; 15 Op. 306, 307, 4 552, 553, 554; 16 Op. 499.
1223....15 Op. 306, 307, 408, 409, 41
1224....14 Op. 574; 15 Op. 405, 406; Op. 499, 500.
1229....16 Op. 298.
1230....16 Op. 599, 600, 601.
1252....15 Op. 444.
1254....15 Op. 444.

....16 Op. 26, 27.
....15 Op. 307.
....15 Op. 307.
....15 Op. 443, 444.
....15 Op. 44.
....16 Op. 9.
....15 Op. 273.
....15 Op. 332, 333.
....16 Op. 17.
....15 Op. 110, 112.
....15 Op. 110, 111, 112.
....15 Op. 111.
....15 Op. 153, 157, 330; 16 Op. 14, 16, 107.
....16 Op. 15, 294.
....16 Op. 15.
....16 Op. 15.
....16 Op. 14, 15, 292, 293, 295.
....15 Op. 635; 16 Op. 416.
....16 Op. 589.
....15 Op. 259.
....16 Op. 417, 419.
....15 Op. 635.
....15 Op. 561, 565.
....15 Op. 635.
....15 Op. 165, 597; 16 Op. 203, 204.
....16 Op. 20, 21.
....15 Op. 445.
....16 Op. 415.
....16 Op. 414, 415, 416.
....15 Op. 635; 16 Op. 417, 419.
....15 Op. 597; 16 Op. 203, 204.
....16 Op. 415, 416, 655.
....15 Op. 337.
....15 Op. 336, 337, 338.
....16 Op. 20, 21, 588.
....16 Op. 588.
....16 Op. 21.
....16 Op. 21.
....16 Op. 20, 21, 587, 588, 590.
....16 Op. 622, 623.
....16 Op. 621, 623.
....16 Op. 622.
....15 Op. 636.
....15 Op. 635.
....15 Op. 636.
....16 Op. 494.
....16 Op. 592.
....15 Op. 318, 319, 320; 16 Op. 22, 23.
....15 Op. 319, 320.
....15 Op. 318, 319, 320, 321, 322, 445.

Sec. 1594....15 Op. 317, 16 Op. 22, 23.
1622....15 Op. 444.
1623....15 Op. 444.
1624....15 Op. 165, 598, 635; 16 Op. 31
578, 579, 580.
1628....14 Op. 493.
1661....14 Op. 492, 494; 16 Op, 478.
1667....14 Op. 492, 497; 16 Op. 478.
1670....14 Op. 492, 493.
1736....16 Op. 269.
1761....16 Op. 531.
1763....15 Op. 307, 308; 16 Op. 7, 8, 56
566.
1764....15 Op. 307, 308, 536; 16 Op. 7,
1765....15 Op. 71, 307, 308, 536; 16 O
7, 8.
1767....14 Op. 563; 15 Op. 406.
1768....14 Op. 563; 15 Op. 62, 63, 37
377, 381, 406; 16 Op. 266, 26
288, 289.
1769....15 Op, 207, 377, 399, 400, 40
406; 16 Op. 522, 523, 524.
1781....14 Op. 484.
1782....14 Op. 484.
1785....15 Op. 609.
1795....15 Op. 56.
1838....15 Op. 213.
1841....16 Op. 27, 28.
1994....15 Op. 116, 600.
1999....15 Op. 16.
2035....16 Op. 239.
2037....16 Op. 630.
2045....15 Op. 406.
2053....15 Op. 405, 406.
2058....15 Op. 67.
2059....15 Op. 405, 406.
2062....14 Op. 573; 15 Op. 405, 406.
2079....16 Op. 555.
2089....15 Op. 67.
2103....15 Op. 351, 588, 589.
2104....15 Op. 590.
2117....16 Op. 569.
2132....16 Op. 141, 142, 143.
2147....14 Op. 453.
2149....14 Op. 452.
2165....14 Op. 510.
2167....14 Op. 510.
2172....15 Op. 115, 116.
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2304....16 Op. 148, 149, 151, 152.
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RIGHT OF WAY.

See also EASEMENT; PUBLIC LANDS, XXXIV.

1. The Chicago and Rock Island Railroad Company and Railroad Bridge Company cannot lawfully enter upon and use, for the purpose of a road, or for any other object, the military reservation of Rock Island, under pretense of authority from the State of Iowa. *Opinion of Aug.* 21, 1854, 6 Op. 670.

2. An act of Congress giving to railroad companies a right of way through the public lands does not apply to or include the military reservation of Rock Island. *Ibid.*

RIPARIAN RIGHTS.

1. The right of the United States, as owner of lot 3 in section 3, township 14 north, range 5 east, at the mouth of Saginaw River, Michigan, to its proportion of the adjoining soil that has appeared above the surface of the river since 1839 is the same, whether such appearance is owing to alluvial deposits or to a recession of the water. *Opinion of Sept.* 20, 1875, 15 Op. 47.

2. Rules suggested for determining the extent and boundaries of that portion of said soil which belongs to the United States as owner of said lot. *Ibid.*

3. Proprietorship of the adjacent lots is not necessary, nor is any permission from riparian proprietors required, to give the United States a right to erect range lights in the waters of Saginaw River. This is a matter between the United States and the State, and not one that concerns the shore-owners. *Ibid.*

RIVERS AND HARBORS.

See also COMMERCE AND NAVIGATION, IX; LANDS UNDER NAVIGABLE WATERS; SHORES AND BEDS OF NAVIGABLE WATERS.

1. The right and title to the lake shore of the great lakes is in the several States, not in the United States. *Opinion of Oct.* 19, 1853, 6 Op. 172.

2. In general, breakwaters and other harbor improvements constructed by the United States, of late years, have been constructed without purchase of land and cession of jurisdiction from the several States in which the works are placed, and the land under them belongs to the respective States. *Ibid.*

3. Lawful authority exists for the protection of the works thus constructed from pillage or appropriation by individuals or corporations. *Ibid.*

4. Obstructions to navigation in the navigable waters of the United States, whether by States or by individuals, constitute acts of purpresture. There is remedy in such case by *ex officio* information in the name of the Attorney-General of the United States. *Ibid.*

5. The Topographical Bureau, in charge of the pier and breakwater constructed by the United States for the improvement of the harbor of Cleveland, may lawfully enter into contract for the use of the same by railway companies. *Opinion of Oct.* 26, 1853, 6 Op. 199.

6. The banks and shores of navigable waters, whether sea, lake, or river, in any of the States, belong either to the State or to individuals, as the case may be, and not to the United States. *Opinion of July* 3, 1855, 7 Op. 314.

7. When by act of Congress a pier or breakwater is constructed for the improvement of a harbor, no right to the land on which it is constructed accrues to the United States by that fact alone, and without purchase and cession from the State. *Ibid.*

8. If, in consequence of any such construction, land is made by accretion, such accretion belongs to the owner of the land to which it attaches, and not to the United States. *Ibid.*

ROCK ISLAND BRIDGE.

The act of March 2, 1867, chap. 170, making appropriation for the construction of a bridge at Rock Island requires that the Rock Island and Pacific Railroad Company shall agree to pay and shall secure the payment of half the cost of the erection of the projected bridge over the west or main channel, and half the expenses of keeping the same in repair. The other portions of the work, viz, the construction of a new track across the island, and the building of a bridge, if necessary, over the east channel of the river, are left subject

to further legislative provision. *Opinion of Sept.* 11, 1867, 12 Op. 231.

ROCK ISLAND MILITARY RESERVATION.

1. The unsold lands of Rock Island, in the State of Illinois, are not subject to pre-emption under the laws of the United States. *Opinion of Nov.* 8, 1862, 10 Op. 360.

2. The reservation of Rock Island for military purposes derives its validity not alone from the act of selection performed by the President, nor from any of the later acts of the Secretaries of War, but primarily from the act of June 14, 1809, chap. 2. *Ibid.*

3. It was not in the power of the President to relinquish that reservation, and thus throw the island back into the general body of the public lands, without the consent of Congress. *Ibid.*

4. The facts in relation to the case of this reservation show that the theory that it has been relinquished, and reverted to the body of the public lands, has never been accepted by either the legislative or executive department of the Government. *Ibid.*

5. The authority of the decision of Mr. Justice McLean, in the case of the United States *vs.* The Railroad Bridge Co. (6 McLean, 517), questioned. *Ibid.*

ROGATORY COMMISSION.

Prior to the enactment of the act of March 2, 1855, chap. 140, no law existed for the execution of foreign rogatory commissions to take testimony in the United States. *Opinion of Feb.* 28, 1855, 7 Op. 56.

SAFE-CONDUCT.

There is no law authorizing the Secretary of State to furnish the owners of the Meteor with a letter of safe-conduct to the American ministers and naval officers in the East. *Opinion of Oct.* 4, 1866, 12 Op. 65.

SALE OF ARMS.

See also PUBLIC ARMS.

The War Department can properly make no sale of arms, except at auction, and on due public notice. *Opinion of Sept.* 12, 1859, 9 Op. 391.

SALE OF MILITARY SITES.

See also PUBLIC LANDS, XXI.

By the act of March 3, 1819, chap. 88, providing for the sale of such "military sites" as are found useless for military purposes, the Secretary of War is authorized to sell *a part* of the land included in the site of the armory at Harper's Ferry. *Opinion of May* 14, 1852, 5 Op. 550.

SALVAGE.

See also MILITARY SALVAGE.

1. The recaptors of American vessels from pirates are entitled to salvage, but the rate rests in the discretion of the court before which the cases shall be brought. *Opinion of Jan.* 8, 1822, 1 Op. 531.

2. The general maritime law sanctions a claim for salvage in the case of a recapture from pirates; and by the act of March 3, 1800, chap. 14, national ships are entitled to salvage from the ships of friendly powers, rescued from their enemies; which act, in spirit, applies to rescues from pirates. *Opinion of Nov.* 30, 1822, 1 Op. 577.

3. The rate of salvage to which recaptors of an American vessel from pirates are entitled is governed by the act of Congress of March 3, 1800, chap. 14, giving, where the vessel shall have been sent forth and armed as a vessel of war, one-half of the vessel, but only one-sixth of the cargo. As to other vessels, the only general rule that can be suggested is one-sixth of vessel and cargo, except where the vessel has been, since her capture, fitted out as a vessel of war, and is recaptured in this condition, in which case one-half of the vessel and her armament and one-sixth of her cargo may be allowed. *Opinion of Dec.* 9, 1822, 1 Op. 584.

4. If the recaptured vessel had been long in the hands of pirates, and had been used as

'n, a higher salvage ought to be al-
ıan if she were recaptured in the mo-
her capture, having just struck, and
r still in the capacity to make resist-
'bid.

e officers and crew of a United States
:e not entitled to salvage as against the
nent for saving the property of the
States wrecked on the Florida reef,
ving done no more than their duty.
of July 22, 1824, 1 Op. 675.

e salvage decreed to the officers and
the United States brig Washington, for
uré of the Amistad, should be divided,
ng those who were on the books of the
t among those who were actually on
'her at the time of the capture. *Opin-
pril 6*, 1842, 4 Op. 17.

e officers and crew of a vessel in the
arine service of the United States are
to salvage for saving a French ship
n the rock of El Riso, near the anchor-
nton Lizardo, the objection that gov-
; vessels are not thus entitled being in-
Opinion of June 20, 1849, 5 Op. 116.

e rule is universal in the United States
vage rendered by the naval marine is
npensated in like manner as that ren-
r the private marine. *Ibid.*

icers and crews of the public ships of
ted States are not entitled to salvage,
military, as of complete legal right.
of July 8, 1856, 7 Op. 756.

he allowance of salvage, civil or mili-
such cases, like the allowance of prize
n captures, is against public policy,
ht to be abolished in the sea service,
s long ago in the land service. *Ibid.*

ı the case of derelict property, saved
o unusual circumstances, a moiety is
imum allowance made to the salvors.
of July 26, 1859, 9 Op. 374.

SCHOOL LANDS.

e PUBLIC LANDS, XIV, XVII.

SEAMEN.

See also SHIPPING.

riners may be said to be citizens of
d, and it is usual for them, of all coun-
tries, to serve on board any merchant ship that will take them into pay. They may serve on board any merchant vessel engaged in contraband trade, without incurring liability to prosecution or punishment for so doing. *Opinion of Jan.* 20, 1796, 1 Op. 61.

2. The master of a vessel belonging to the United States, sold in a foreign country in consequence of her being stranded, is not liable for three months' unearned pay to the seamen within the meaning of the third section of the act of February 28, 1803, chap. 9, for such sale was the result of a disastrous Providence. *Opinion of Dec.* 31, 1804, 1 Op. 148.

3. That section, which requires of the master of a vessel belonging to a citizen of the United States, on a sale of such vessel and a discharge of her crew in a foreign country, &c., a payment of three months' wages beyond what may be due at the time of the discharge, does not include all cases where there may be a sale of the vessel, but embraces those sales in the common course of merchandise only, where, on the sale, both freight and wages have accrued. *Ibid.*

4. Seamen left behind in a foreign country on account of inability, from sickness, to return in the vessel in which they went out, are within the provisions of the act of 28th of February, 1803, chap. 9, supplementary to the act concerning consuls; and for them the master should deposit with the consul three months' pay over wages, &c., as in other cases of voluntary discharge. *Opinion of Feb.* 18, 1823, 1 Op. 593.

5. The three months' pay, over and above the wages due mariners, provided for by the act of February 28, 1803, chap. 9, in certain cases, establishes a necessary connection between the pay so to be advanced to the consul by the shipmaster and the rate of wages then accruing to the seamen. *Opinion of Aug.* 28, 1829, 2 Op. 256.

6. The policy of that act was to discourage the discharge of American seamen in foreign ports. *Ibid.*

7. Where the vessel had been wrecked on the coast of Spain, and the captain, exercising the authority vested in him under those circumstances, sold her on account of the underwriters and discharged the company: *Held*, that the case was not within the act of February 28, 1803, chap. 9, and that, therefore,

the consul of the district cannot retain three months' extra wages for the seamen. *Opinion of March* 22, 1831, 2 Op. 419.

8. The provisions of the act of 28th February, 1803, chap. 9, in relation to the extra wages of American seamen, to be paid to the consul where the ship is sold and her crew discharged in a foreign country, are confined to vessels owned by citizens of the United States, and constituting a part of our mercantile marine by sailing under our flag. American seamen on foreign vessels must look to the laws of the country under whose flag they sail for remuneration and protection in such emergencies. *Opinion of April* 2, 1831, 2 Op. 448.

9. The public interest requiring that American seamen should not be discharged abroad, nor set on foreign shores in foreign ports, where they may be tempted to enter into foreign employment, to the loss of our service, the Government has given instructions to commanders to send home their discharged seamen at the expense of the United States. *Opinion of Nov.* 3, 1831, 2 Op. 468.

10. Seamen on board vessels of war are not entitled to pecuniary assistance from consuls abroad under act of 28th of February, 1803, chap. 9. *Opinion of Oct.* 27, 1841, 3 Op. 683.

11. The moneys in the hands of the Secretary of State were raised from the wages of merchant seamen only, and should be applied only for the relief of that class of seamen which have contributed to the fund. *Ibid.*

12. Seamen on board ships of war are not entitled to pecuniary assistance from consuls under the acts of April 14, 1792, chap. 24, and February 28, 1803, chap. 9. *Opinion of Oct.* 28, 1841, 3 Op. 685.

13. The act of February 28, 1803, chap. 9, requiring masters of vessels belonging to citizens of the United States, and bound to some port of the same, to take, at the request of the consul, destitute seamen on board, and to transport them to the port of the United States to which such vessel may be bound, is limited to such vessels as shall be bound from the port where the request is made direct to some port in the United States. *Opinion of July* 10, 1843, 4 Op. 185.

14. To require all American vessels in foreign ports, whether bound directly to some port of the United States or not, to receive destitute seamen would in many cases be very oppressive upon masters and owners. *Ibid.*

15. American seamen shipped in a *British* vessel, and, in consequence of its being wrecked, were left in a foreign port destitute: *Held*, that they were entitled to the relief provided in the fourth section of the act of 28th of February, 1803, chap. 9. *Opinion of May* 12, 1852, 5 Op. 547.

16. Expenditures for the ransom of the crew and passengers of a wrecked American vessel, held prisoners by the Indians of Queen Charlotte's Island, do not come within the scope of the appropriations for the relief of American seamen, administered by the Secretary of State. *Opinion of Sept.* 22, 1853, 6 Op. 126.

17. The statute provision (see act of March 2, 1829, chap. 41) for the surrender of deserting seamen applies only to the seamen of governments with which a treaty exists to that effect. *Opinion of Oct.* 14, 1853, 6 Op. 148.

18. There is no express provision to that effect in existing treaties between the United States and Denmark. *Ibid.*

19. A legislative act of the British colony of New South Wales, enacting that certain proceedings may be had in the court as to deserting seamen of any foreign country in that colony, provided its government assents: *Held*, that the President cannot give such assent on the part of the United States, but that it can only be done by treaty or act of Congress. *Opinion of Oct.* 28, 1853, 6 Op. 209.

20. Masters of American vessels cannot lawfully discharge seamen in foreign ports without intervention of the consul. *Opinion of July* 17, 1855, 7 Op. 349.

21. It does not help the matter to allege that the seamen consent, or have misconducted themselves, or are not Americans; of all that it is for the consul to judge. *Ibid.*

22. There is punishment by statute for the act of a shipmaster in unlawfully putting a seaman on shore in a foreign port. But not for an assault on a seaman on board ship or otherwise in a foreign port. *Opinion of June* 21, 1856, 7 Op. 721.

23. Shipmasters in foreign ports are subject, on the requisition of the consul, to take on board and convey to the United States distressed mariners; but not seaman or other persons accused of crimes, and to be transported to the

United States for prosecution. *Opinion of June* 5, 1856, 7 Op. 722.

24. No indictment lies against a master of a ship for discharging irregularly, in a foreign port, a seaman shipped irregularly, in the United States. But a *qui tam* suit lies for the irregular shipment. *Opinion of June* 27, 1856, 7 Op. 730.

25. The master of a ship is indictable for acts of violence to a seaman on board the ship in the harbor of Charleston. *Opinion of June* 27, 1856, 7 Op. 732.

26. Under the treaty of 1819 with Spain, and the act of March 2, 1829, chap. 41, which was made to carry out that and other treaties of the same kind, the apprehension and delivery of a seaman, who is alleged to be a deserter from a Spanish ship, is a judicial duty, and the State Department cannot change what a judge has done. *Opinion of Sept.* 24, 1857, 9 Op. 96.

27. To prove the fact of desertion, the treaty requires the exhibition of the ship's roll with the name of the deserter upon it, and this is not met by the mere certificate of a Spanish consul. *Ibid.*

28. The master of a vessel is a "mariner" within the meaning of the third and fourth sections of the act of February 28, 1803, chap. 9. *Opinion of April* 9, 1866, 11 Op. 458.

29. He is entitled, if a citizen of the United States, to three months' additional wages on being discharged in a foreign port, as in the case of a like discharge of any other seaman or mariner. *Ibid.*

30. Where the crew of an American ship had been shipped by the master in the United States, and the shipping articles contained a clause that "all moneys were to be paid in United States currency or its equivalent in gold at the current rate of exchange": *Held*, that, in settling some accounts with the master, at Singapore, India, for the wages of his crew, the United States consul there should have allowed a deduction from the pay of the seamen of the difference between "greenbacks" and gold or silver, the currency of Singapore, and the cost of exchange thereon between India and America. *Opinion of Jan.* 4, 1872, 13 Op. 557.

31. Though the law is liberal in construing contracts in favor of seamen, still it holds them capable of contracting, and bound like other persons by their contracts when no fraud is practiced upon them. *Ibid.*

32. Four seamen deserted from an American merchant-vessel in a foreign port, leaving in the hands of the master, besides what was due them as wages, some clothing and other effects, all of which the master delivered to the United States consul at the port on the demand of the latter. By instructions from the State Department, the consul sold the clothing, &c., and forwarded the proceeds thereof, with the amount due the seamen as wages, to that Department. No proceedings have been instituted against the seamen for the offense of desertion. Upon the question as to what disposition should be made by the Department of the money: *Advised*, that the funds, together with a statement of such facts touching the case as may be in the possession of the Department, be transmitted to the circuit judge for the district wherein the port is in which the vessel is owned or at which her voyage terminated. *Opinion of Jan.* 28, 1875, 14 Op. 520.

33. A consul has no authority to demand and receive from the master of a vessel the money and effects belonging to a deserter from the vessel. *Ibid.*

34. The steps which should be taken by the master with reference to the disposition of such property indicated. *Ibid.*

35. Section 5280 Rev. Stat., which provides for the restoration of seamen deserting from vessels of foreign governments which have treaties with the United States stipulating therefor, applies only to cases of desertion that occurred while the vessel was in a port of the United States and wherein the person charged with desertion is not a citizen of the United States. *Opinion of June* 12, 1879, 16 Op. 358.

SECRETARY OF STATE.

See also STATE DEPARTMENT.

1. It is the duty of the Secretary of State, under the act of March 3, 1843, chap. 100, to prescribe to the contractor for publishing documentary history of the American Revolution the contents of the several volumes, that the selection of materials may not be altogether at

the discretion of the compilers. *Opinion of May* 26, 1847, 4 Op. 585.

2. He may signify his approval of the materials, either before or after the manuscript shall be prepared for publication, as may be most convenient. The law will be answered by an approval at any time previous to the publication. *Ibid.*

3. The Secretary of State has no power to appoint a commission or board to determine how much money a foreign prince shall pay to counsel in the United States for professional services. *Opinion of March* 17, 1854, 6 Op. 386.

SECRETARY OF THE INTERIOR.

See also EXECUTIVE DEPARTMENTS.

1. The authority of the Secretary of the Interior to supervise the Patent Office comprehends the power to appoint such temporary clerks to be employed therein as shall be authorized by law, and to cause their salaries to be paid out of any money appropriated for that purpose. *Opinion of Dec.* 7, 1850, 5 Op. 283.

2. The Commissioner of Patents, therefore, is subordinate to, under the superintendency of, and subject to the control of, the Secretary of the Interior in the appointment and payment of such clerks; and his authority is the same whether the money disbursed be appropriated from fees, or from the agricultural or from any other fund. *Ibid.*

3. The twenty-fifth section of the act of 26th of August, 1842, chap. 202, having been construed to repeal the enactments which conferred the power, the Secretary of the Interior is without authority to appoint agents to examine into the condition of the local land offices. *Opinion of June* 23, 1851, 5 Op. 377.

4. The expenses incurred in the examination of the books, accounts, &c., of the receivers of public money, arising from the sale of the public lands by designated agents of the Treasury Department, under the subtreasury law, are chargeable to the appropriations for special agents to examine books, accounts, and money on hand in the several depositories under the law. *Ibid.*

5. The Secretary of the Interior is empowered by law to judge of the necessity of expenses of clerk-hire and other expenses in the office of clerks of circuit and district courts where there is a surplus of fees above the statute allowance for salary, and to regulate the same in advance, subject to such modifications of amount, either by enlargement or diminution, and either periodical or occasional, as the satisfactory administration of justice in the several circuits or districts may require. *Opinion of Oct.* 13, 1855, 7 Op. 543.

6. The question of the expediency of continuing or dismissing an appeal in the Supreme Court, on a suit involving alleged trespass upon or title of the public lands, belongs to the competency of the Secretary of the Interior, not of the Attorney-General. *Opinion of Oct.* 15, 1855, 7 Op. 550.

SECRETARY OF THE NAVY.

See also EXECUTIVE DEPARTMENTS.

1. The Secretary of the Navy has the contingent fund of the Department entirely at his disposal, from which he may draw for the purpose of compensating any services rendered in any of the relations of his Department which are of a contingent character. *Opinion of Sept.* —, 1819, 1 Op. 302.

2. The Secretary of the Navy has authority to transfer the bonds in which a part of the navy pension fund is invested. *Opinion of Dec.* 2, 1841, 3 Op. 719.

3. The Secretary of the Navy has authority to arrange with Baring Brothers & Co., of London, for the payment of the drafts of disbursing officers attached to foreign squadrons. *Opinion of Dec.* 6, 1849, 5 Op. 218.

SECRETARY OF THE TREASURY.

See also TREASURY DEPARTMENT.

1. The Secretary of the Treasury has no power to correct an alleged error of a court of the United States and to refund a sum of money said to have been improperly paid in consequence of such alleged error. *Opinion of Nov.* 15, 1820, 1 Op. 405.

2. Nor can he increase an allowance made by the Secretary of the Navy to certain citizens under the act of April 26, 1822, chap. 36,

by adding interest thereto or otherwise. *Opinion of April* 7, 1823, 1 Op. 605.

3. It is not the duty of the Secretary of the Treasury to instruct district attorneys in the discharge of duties merely professional. *Opinion of April* 11, 1823, 1 Op. 608.

4. If the Secretary of the Treasury is capable of seeing what he does, so that one paper cannot be passed upon him for another, he may impress his name with a stamp or copper-plate instead of a pen, provided he keep the stamp or copper-plate in his own possession and apply it himself, or cause it to be applied in his presence. *Opinion of July* 5, 1824, 1 Op. 670.

5. The Secretary cannot legally pay to the State of Illinois the 3 per cent. of the proceeds arising from the sales of public lands within the same, reserved under the acts of 18th April, 1818, chap. 67, and 12th December, 1820, chap. 2, unless the account required by the last-mentioned act indicated that the moneys heretofore paid have been applied to the encouragement of learning within the State of Illinois. *Opinion of Sept.* 11, 1829, 2 Op. 269.

6. The exchange of those moneys by the State of Illinois for warrants upon the auditor of the State cannot be considered by the Secretary of the Treasury as an application of them within the meaning of the law. *Ibid.*

7. The act of 3d March, 1797, chap. 13, authorizing the Secretary of the Treasury to remit "fines, forfeitures, and penalties," does not confer the power to release a bond given to entitle the obligor to drawback after the same has become an absolute debt to the United States. *Opinion of Oct.* 21, 1829, 2 Op. 278.

8. It is not the duty of the Treasury Department to investigate the facts and circumstances alleged to exist by a surety to a bond given to the United States, and by him paid, concerning a certain trust fund, in which he claims an interest, created by an assignment of the principal debtor, and which he avers has been applied by the United States to the payment of other bonds of the same debtor. The question belongs to the judiciary. *Opinions of Aug.* 19, 1831, *and Dec.* 2, 1831, 2 Op. 457, 473.

9. The Secretary of the Treasury may take security from State banks for the safety of the public deposits, in case they shall be made depositaries of the public moneys and fiscal agents of the Government. *Opinion of Sept.* 21, 1833, 2 Op. 584.

10. It is an incident to the general right of sovereignty for the Government to enter into contracts not prohibited by law and appropriate to the just exercise of those powers. *Ibid.*

11. After a fine has been imposed by a collector of customs for a violation of the revenue laws, and collected and distributed, the Secretary of the Treasury is not authorized, under the acts of 3d March, 1797, chap. 13, and 14th July, 1832, chap. 233, or either of them, to remit it. *Opinion of June* 2, 1837, 3 Op. 237.

12. The Secretary of the Treasury has no legal authority to investigate the condition of the banks of Wisconsin Territory without their consent. *Opinion of Jan.* 9, 1839, 3 Op. 404.

13. Nor can he, under existing law, refund moneys deposited for duties with a collector, but which are ultimately found to exceed the amount of duties properly chargeable. *Opinion of July* 29, 1840, 3 Op. 583.

14. Nor can he refund duties erroneously paid under protest and which the collector has accounted for. *Opinion of Jan.* 22, 1841, 3 Op. 613.

15. The Secretary may examine into all the facts and circumstances which constitute the grounds upon which a judgment for losses has been rendered (relative to Florida claims), and determine, upon the whole case, whether the decision of the judge is just. *Opinion of July* 17, 1841, 3 Op. 635.

16. He may institute the survey of the light-house establishment under the appropriation "for expenses of examining annually the condition of the light-houses," in the act of May 18, 1842, chap. 29. *Opinion of June* 4, 1842, 4 Op. 50.

17. The Secretary of the Treasury may appoint a person as clerk, to aid in the supervision of the coast surveys, with salary of $400 per annum, who at the same time holds the office of clerk in the Treasury Department, with a salary of $1,400 per annum; and the accounting officers should pay such salary. *Opinion of June* 7, 1851, 5 Op. 765.

18. The Secretary of the Treasury is authorized, by act of September 28, 1850, chap. 79, to indemnify owners of goods for damages caused by improper seizures in the districts of Upper California and Oregon. *Opinion of Jan.* 23, 1852, 5 Op. 508.

19. The jurisdiction of the commissioner of

customs is not final and exclusive of the jurisdiction and authority of the Secretary of the Treasury; nor does the duty to countersign warrants "which shall be warranted by law," authorize the subordinate officers of the Treasury to supervise or revise the decision of the Secretary. *Opinion of Nov.* 13, 1852, 5 Op. 630.

20. The law prescribes no form for the decisions of the Secretary of the Treasury, and they may be rendered in writing or orally. *Opinion of Dec.* 28, 1852, 5 Op. 664.

21. Where certain facts are presented, tending to show that a decision was once given by a Secretary, the Attorney-General will not undertake to decide whether they are sufficient evidence of such a decision. *Ibid.*

22. It is not competent for the Secretary of the Treasury to review the decisions of a predecessor on claims or accounts, except where mistakes have occurred in matters of fact, and where material new evidence has been discovered. *Ibid.*

23. In certain cases, under the passenger laws, forfeitures may be remitted by the Secretary of the Treasury. *Opinion of March* 24, 1854, 6 Op. 393.

24. In cases of mere forfeiture or other penalties accruing to the Treasury under the acts of Congress relative to the transportation of passengers, the Secretary of the Treasury may remit, as in similar cases arising under the revenue laws. *Opinion of May* 31, 1854, 6 Op. 488.

25. This does not exclude the general power of the President to pardon; and where, under the same passenger laws, personal punishment is inflicted, the case can be reached only through the pardoning power of the President. *Ibid.*

26. In virtue of the acts of March 3, 1823, chap. 35, and June 26, 1834, chap. 87, which provide for the execution of the ninth article of the treaty of 1819 between the United States and Spain for the cession of Florida, which awards damages in certain cases to inhabitants of Florida, the Secretary of the Treasury has lawful authority to determine whether the awards of the judge of the district court of Florida are "just and equitable" or not, and to allow or disallow the same accordingly, at his discretion. *Opinion of June* 9, 1854, 6 Op. 533.

27. The decision of preceding Secretaries of the Treasury that interest is not allowable on such claims is to be considered as *res adjudicata*, and binding on the present Secretary. *Ibid.*

SECRETARY OF WAR.

See also WAR DEPARTMENT.

1. The Secretary of War is not required to perform duties in the field. He does not compose any part of the Army, and has no service to perform that may not be done at the seat of government. If he leaves the seat of government for the seat of war, by order of the President, for military purposes, he may be paid the expenses of the tour, otherwise not. *Opinion of Jan.* 25, 1821, 1 Op. 457.

2. It is immaterial who proposed such service; if the President adopted the measure the Secretary should be paid the expenses. *Opinion of Oct.* 16, 1821, 1 Op. 493.

3. The Secretary of War, in the execution of his public duties, cannot (in view of the provisions of the acts of March 3, 1839, chap. 82, and August 23, 1842, chap. 183) employ and compensate collectors, &c., in the revenue service, for disbursing moneys appropriated for topographical purposes. *Opinion of July* 14, 1845, 4 Op. 401.

4. But he is vested with a discretion which authorizes him to allow to the sub-agent for the Indians west of the Rocky Mountains, for such expenditures, not previously authorized, as he *might have* previously authorized as proper. *Opinion of April* 2, 1846, 4 Op. 477.

5. The Secretary of War is not under obligation by law to discharge minors from the Army on the application of alleged parents or guardians not domiciled in the United States. *Opinion of July* 19, 1854, 6 Op. 607.

6. The Secretary of War has no power to employ and pay special counsel to represent a military officer against whom a writ of *habeas corpus* has been issued by a circuit court in the case of a prisoner held in custody by him. *Opinion of Feb.* 7, 1868, 12 Op. 368.

SEIZURE.

See also CUSTOMS LAWS, X.

1. If the circumstances attending the seizure of a vessel by the governor of Guadaloupe

were such as to constitute a defense in a suit against him for such seizure brought in a State court, they must be pleaded in the action. If the seizure were an official act done by the defendant under color of the powers vested in him as governor they will be an answer, as the extent of the defendant's authority can be determined only by the constituted authorities of his own nation. *Opinion of June* 16, 1794, 1 Op. 45.

2. Although the officers and crew who seized the Carmelita for the violation of the slave laws are entitled to a moiety of the proceeds of that vessel, it is doubtful whether it would be consistent with the respect due to the district court of Georgia, which has decided otherwise, to question its decision on the *ex parte* statement of an interested individual. *Opinion of Dec.* 16, 1819, 5 Op. 719.

3. The fifty-sixth section of the act of 2d March, 1799, chap. 22, does not authorize the collector of customs at Sag Harbor to take possession of and sell goods which were wrecked on Long Island. *Opinion of Feb.* 8, 1820, 5 Op. 721.

4. When the equipment of a vessel is adapted to the slave-trade, that fact, with other circumstances, may be probable cause for a seizure. *Opinion of May* 19, 1820, 5 Op. 724.

5. In November and December, 1860, a manufacturing firm of Fredericksburg, Va., consigned to a mercantile house in Baltimore for sale a quantity of kerseys. In May, 1861, the Fredericksburg house directed the return of the goods by way of Point of Rocks and Alexandria. They were shipped in obedience to this order, and were seized *in transitu* on May 3, 1861, by the Government authorities at Alexandria. On June 19 the Fredericksburg house, having been advised of the seizure, transferred by letter their right and claim to the goods to a Baltimore firm, at a fixed valuation, in payment of a pre-existing debt. These transactions were thus all prior to the act of July 13, 1861, chap. 3, prohibiting commercial intercourse with the insurgent territory and confiscating property proceeding to that territory from the rest of the United States. The Baltimore firm claimed the goods: *Held*, that the claimants were entitled to receive the property, and that it should be restored to them by the military authorities. *Opinion of Nov.* 6, 1861, 10 Op. 152.

6. Advice in regard to the proper disposition by the Treasury Department of the gold coin claimed by certain Richmond banks, on special deposit with the United States Treasurer. *Opinion of Feb.* 2, 1866, 11 Op. 419.

7. A lot of cotton was seized by a Treasury agent in the belief that it was the property of the rebel government. The proofs showed that it was private property; that it was never captured by the military forces; that it was not abandoned or taken as captured or abandoned property: *Held*, that the owner was entitled to restoration of the cotton. *Opinion of April* 24, 1866, 11 Op. 478.

8. The bonds of the school fund of Louisiana should be restored to the State authorities. *Opinion of June* 16, 1866, 11 Op. 502.

9. The seizure of the cotton, claimed by Rosencrantz and Merchant, on May 13, 1865, under the order of General Canby, constituted a valid capture, upon which the Court of Claims can alone adjudicate, under the act of March 12, 1863, chap. 120, according to the principle of the case of the Savannah cotton. *Opinion of June* 16, 1866, 11 Op. 503.

SET-OFF.

1. The accounting officers will not be justified in admitting as an offset to an amount due from an individual, on a contract with the Navy Department, an amount found due to such individual by a jury in Kentucky. The finding of the jury is not *per se* such an establishment of a claim against the United States as to justify accounting officers in admitting it as a set-off. *Opinion of Jan.* —, 1823, 1 Op. 590.

2. To allow a set-off is, in effect, to make payment of the claim set up against a debt due the United States, and unless the accounting officers would be justified in paying it as a separate and independent claim, they cannot properly allow it as a set-off. *Ibid.*

3. Upon the facts submitted, the Government cannot legally retain out of the moneys directed by the act of May 24, 1824, chap. 144, to be paid to the assignees and representatives of J. H. Piatt the amount of the bill of J. H.

Piatt & Co., which had been assigned to the Treasurer under protest. *Opinion of Dec.* 15, 1824, 1 Op. 700.

4. The law of set-off is limited to mutual debts between the same parties. If it be departed from at the Treasury, there will be no other definite rules for the regulation of its practice. *Opinion of Jan.* 6, 1825, 1 Op. 700.

5. The accounting officers cannot set off against A's trustees a debt owing by A to the assignees of B, who was a debtor to the United States. *Ibid.*

6. Set-off differs from a lien, inasmuch as the former belongs exclusively to the remedy, and is merely a right to insist, if the party thinks proper to do so, when sued by his creditor, on a counter demand, which can only be enforced through the medium of judicial proceedings; whilst the latter is, in effect, a substitute for a suit. *Opinion of Nov.* 28, 1834, 2 Op. 663.

7. The United States have the right to retain moneys awarded, under the French treaty of 1831, to a firm of which one member is indebted to the Government upon a bond for duties on goods imported for the firm, and to apply the same upon the bond. *Opinion of Nov.* 16, 1836, 3 Op. 163.

8. Where a disbursing agent of the Government is in apparent default in respect to the moneys intrusted to him, and there be sufficient due him from the Government to make good the deficiency, it is proper thus to satisfy the claim for such dues. *Opinion of April* 9, 1844, 4 Op. 316.

9. If there be due him any sum over and above that which is necessary to make good such deficiency, it ought not to be retained, but should be paid to him, or, as in the case considered in the opinion, to his lawful assignee. *Ibid.*

10. Where the same person is contractor for two articles under separate contracts, and fulfills one and fails in the other, and presents his account to the Treasury for settlement, the accounting officer may set off, in the adjustment, such amount as may be due from him to the Government upon his claim against it. *Opinion of May* 17, 1845, 4 Op. 380.

11. This may be done in all cases where the relation of debtor and creditor arises in the settlement of the accounts of the same individual, as the grounds of the credits and debits are not material. *Ibid.*

12. Where a contractor for supplies for the Navy, who was bound in separate contracts to furnish sugar and tea in stipulated quantities during a fiscal year, made default in respect to the sugar, but furnished the tea by causing it to be shipped to the naval storekeeper by a firm in New York, to whom the contractor indorsed over bills for the same made out in his name, payment of which has been refused on account of the contractor's defalcation on the contract for sugar: *Held*, that the sale of the tea was made by the firm to the contractor, and not to the Government, and that the amount due therefor may be withheld and set off as against the damages sustained by the Government on account of the non-fulfillment of the other contract. *Opinion of Feb.* 15, 1847, 4 Op. 551.

13. The balance of $95,588.63, due the United States from the late territorial government of Florida, ought not to be set off in the extinguishment of the appropriation of $75,000 made by Congress by the act of February 27, 1851, chap. 12, for reimbursing to the State of Florida moneys advanced for supplies and service of the local troops called into service during the year 1849. *Opinion of Nov.* 17, 1851, 5 Op. 455.

14. By compact between the United States and the State of Wisconsin, when the latter was admitted into the Union, it was agreed that the United States would pay to the State 5 per cent. of the net proceeds of the sale of public lands within the same, for the use of its schools, provided that certain liabilities of the Territory of Wisconsin on account of lands granted by the United States for canals therein shall be paid and discharged by the State. *Held*, that the United States cannot make a set-off of the 5 per cent. school fund to pay the canal debt, because the former is a special trust fund; but that the United States may retain the money in trust itself until the State discharges its obligation in the other respect to the United States. *Opinion of Sept.* 18, 1854, 6 Op. 732.

15. Against a claim allowed by Congress the Secretary of the Treasury cannot set off a debt alleged to be due by the claimant to the United States upon which no suit has ever been brought or judgment recovered, and the justice of which is denied by the party. *Opinion of July* 21, 1858, 9 Op. 198.

16. The United States, like other creditors,

nust establish their rights against a citizen by lue course of law and before the proper tribu-ıals, there being no law which gives to the ecretary of the Treasury the power to adjudi-ate upon disputed claims of the Government gainst individuals. *Ibid.*

17. It is especially necessary to observe this ule where the demand of the United States is ased upon a transaction of remote date, where he parties and witnesses are dead, and the apers probably lost or destroyed. *Ibid.*

18. Though the head of a Department has o right to set off one independent claim against nother; yet where debits and credits, claims nd counter-claims arise between the Govern-nent and a contractor out of the same con-ract, he may ascertain both, and regard that arty as debtor against whom the balance is ound to be. *Opinion of Nov.* 14, 1859, 9 Op. 01.

19. The accounting officers have no power o set off against an account upon a contract claim in favor of the United States for un-iquidated damages for a tort of the party hose account is presented for adjustment. *pinion of July* 2, 1868, 12 Op. 431.

SHIPPING.

ee also COMMERCE AND NAVIGATION; SEA-MEN; VESSEL.

1. The certificates of foreign ministers do ot compose a part of the regular papers with hich a ship is usually furnished for the pro-ection of herself and cargo. The regular apers are those alone which the constituted uthorities of the courts are competent to give. *pinion of July* 20, 1807, 1 Op. 162.

2. The second section of the act of 28th of ebruary, 1803, chap. 9, does not require the apers of an American vessel in a foreign port o be delivered to the consul, except in cases here it is necessary to make an entry at the ustom-house. *Opinion of June* 11, 1845, 4 p. 390.

3. In order that the master of a ship, on her 'arrival" in a foreign port, shall be com-ellable to deposit the ship's papers with the onsul, the arrival must be such an one as in-olves entry and clearance. *Opinion of Oct.* 7, 1853, 6 Op. 163.

4. Masters of American vessels are subject to prosecution in the name of the consul for omission to deposit with him the papers according to law, but not to indictment. *Opinion of Aug.* 22, 1855, 7 Op. 395.

5. The commander of an American vessel is required to deliver his register and other ship's papers to the consul at a foreign port only in cases where he is compelled to make an entry at the custom-house. *Opinion of Nov.* 10, 1858, 9 Op. 256.

6. Before the sale of a vessel to the Government is completed, all debts for repairs and materials on her account should be paid or secured. *Opinion of July* 6, 1859, 9 Op. 364.

7. Where a steamer was chartered by the Government to be employed in the river La Plata, with stipulation that she should be delivered in a tight, staunch, seaworthy condition, well fitted with every appliance requisite for the business in which she had theretofore been engaged, it was *held* that the warranty was limited to the time of delivery, and had relation to the employment for which the vessel was chartered. *Opinion of Feb.* 18, 1860, 9 Op. 418.

8. The master of an American vessel sailing to or between ports in the British North American provinces is required, on arriving at any such port, to deposit his ship's papers with the American consul. *Opinion of Sept.* 7, 1864, 11 Op. 73.

9. The act of August 5, 1861, chap. 49, does not change or affect the duties of masters of American vessels running regularly by weekly or monthly trips, or otherwise, to or between foreign ports, as imposed by the act of February 28, 1803, chap 9. *Ibid.*

10. If an American vessel is obliged by the law or usage prevailing at a foreign port to effect an *entry*, and she does enter conformably to the local law or usage, her coming to such foreign port amounts to an "arrival" within the meaning of the second section of the act of February 28, 1803, independently of any ulterior destination of the vessel, or the time she may remain, or intend to remain, at such port, or the particular business she may transact there. *Ibid.*

11. The fees receivable by a consul for receiving and delivering a vessel's register and other papers under the act of February 28,

1803, are prescribed by regulation of the President. *Ibid.*

12. The act of August 5, 1861, was merely intended to limit the amount of fees payable annually to American consuls by the masters of American vessels running by regular trips to or between foreign ports. *Ibid.*

13. The provisions of the act of February 28, 1803, chap. 9, in reference to the deposit of ship's papers with American consuls, apply to American steam ferry-boats running between Detroit and Windsor, Canada West. *Opinion of May* 12, 1865, 11 Op. 237.

14. Citizens of the United States who resigned commissions in the Navy of the United States and entered the rebel service did not lose their citizenship by becoming traitors, and, if otherwise qualified, are competent to be officers of vessels of the United States. *Opinion of Aug.* 12, 1865, 11 Op. 317.

15. The proviso of the act of June 28, 1864, chap. 170, was not intended to disqualify persons who are not citizens of the United States from becoming engineers or pilots on American steam-vessels carrying passengers. *Opinion of May* 22, 1866, 11 Op. 488.

16. Upon the facts appearing in the case of the Spanish bark Maria and Julia, the master of that vessel has not a present valid claim against the Government of the United States for the amount of the wages due him from the owners. *Opinion of Sept.* 19, 1866, 12 Op. 48.

17. A foreign-built vessel, wholly owned by citizens of the United States, and having no foreign registry, is entitled by virtue of her American ownership to carry the American flag and to the protection of the American Government. *Opinion of June* 19, 1880, 16 Op. 533.

SHORES AND BEDS OF NAVIGABLE WATERS.

See also COMMERCE AND NAVIGATION, IX; LANDS UNDER NAVIGABLE WATERS; RIVERS AND HARBORS.

The vacant shore-land between high and low water mark in California, as in each of the other new States, vests in the same on its admission into the Union. *Opinion of April* 9, 1853, 8 Op. 422.

SILVER COIN.

1. Under the third section of the joint resolution of July 22, 1876, the amount of "fractional currency outstanding" is to be determined not merely by the records of the Treasury Department, which show how much has been issued and redeemed, but also by ascertaining how much has been lost or destroyed so that it can never be presented for redemption. *Opinion of June* 14, 1877, 15 Op. 312.

2. When satisfied as to the amount lost or destroyed, the Secretary of the Treasury has authority to issue an equal amount of subsidiary silver coin to replace it, subject to this restriction, viz, that the aggregate amount of subsidiary silver coin put in circulation, together with the amount of fractional currency outstanding, is not at any time to exceed $50,000,000. *Ibid.*

3. Section 3586 Rev. Stat. makes the subsidiary silver coins of the United States legal tender at their nominal value only where the *amount of the debt*, in payment of which they are offered, does not exceed $5. *Opinion of Sept.* 24, 1878, 16 Op. 139.

4. The provision applies alike to cases wherein the officers of the Government are receiving payment of its dues and to cases wherein they are disbursing the public funds in discharge of its obligations. *Ibid.*

SLAVES.

See also SLAVE TRADE.

1. Bringing slaves from Martinique, the property of residents there, may be piracy, or may prove, by the place of its commission, to be only an offense against the municipal laws. *Opinion of Nov.* 1, 1792, 1 Op. 29.

2. The Government may instruct the district attorney for Georgia to prosecute the offenders *criminaliter*, as far as the law will permit, having in view the restitution of the negroes to their true owner; and that failing to procure such restitution, to issue civil process for the like purpose with the approbation of the owner or agent, he assuming the expense. *Ibid.*

3. It is the duty of the President to cause to be delivered to the minister of Denmark a slave who, by concealment in an American vessel lying at St. Croix, had been brought to

the port of New York, and detained in prison until orders might be given concerning the further disposal of him. *Opinion of Sept.* 27, 1822, 1 Op. 567.

4. So long as Denmark tolerates slavery in her dominions, it is an invasion of her sovereignty to take away from St. Croix, by seduction, invitation, connivance, ignorance, or mistake, slaves from the possession of Danish owners, and, if allowed and unredressed on our part, is a just cause of war; to bring them to the United States, and to refuse to return them to their owners on the call of their Government, would be such a violation of private property, and such a lawless infraction of the rights and sovereignty of Denmark, as to expose us to the just resentment of that nation, and the merited reproach of the civilized world. *Ibid.*

5. The President may issue an order directed to the marshal of the State of New York, requiring him to deliver the slave to the order of the minister of Denmark; or he may notify the governor of that State of the facts, and request him to cause him to be delivered to the marshal for the purpose of delivering him over to the minister. *Ibid.*

6. The treaty with Great Britain of 1815 contains no express stipulation on the subject of slaves employed as seamen on British merchantmen trading to the United States, and the first article cannot be construed to imply an obligation to protect the rights of foreign owners of slaves brought to our shores thus as seamen. *Opinion of Dec.* 6, 1831, 2 Op. 475.

7. As it is a fixed principle of the law of England that a slave becomes free on touching the soil of Britain, the Government of the United States cannot be required, by the mutuality and liberty of commerce expressed in the treaty, nor by comity, to protect the rights of British slave-masters over their slaves when they are found in our country. *Ibid.*

8. If by the laws of any of the States a slave becomes free as soon as he is brought within their limits, and the slaves of British subjects are found there, and taken by the State authorities from their owners and declared to be free, the General Government is under no obligation to interfere in behalf of masters, nor have British masters any right to call on the United States to support their claim of property. *Ibid.*

9. Wherefore, the right of property of the master must depend on the laws of the State where the slaves may be found. *Ibid.*

10. The President has no power to cause fugitive slaves, who have taken refuge among the Indians west of the Mississippi, to be apprehended and delivered by the United States officers and agents to the owners from whom such slaves shall have fled. *Opinion of Aug.* 30, 1838, 3 Op. 370.

11. The courts of the United States are open to the complaint of the owner of an abducted slave; but the Executive authority cannot properly interfere to administer relief in such cases. *Opinion of Nov.* 2, 1843, 4 Op. 269.

12. Where an American vessel has brought off a slave from the Cape de Verde Islands, the Executive will not interfere further than to direct the district attorney to inquire into the facts and institute a prosecution if they warrant it. *Ibid.*

13. Certain negroes who emigrated, in 1837 and 1838, with the Seminoles from Florida to the country assigned them west of the Mississippi, but who thereafter left the employment of the Seminoles and went to the military reserve at Fort Gibson, where they were protected by General Arbuckle, pursuant to a letter from General Jessup, dated 8th April, 1846, stating that they had been promised a qualified freedom by him, as commanding general of the army in Florida, should be restored to the condition in which they were with the Seminoles prior to the date of said letter, and the military authorities should be so instructed. *Opinion of June* 28, 1848, 4 Op. 720.

14. The provisions of the bill, commonly called the fugitive-slave bill (the act of September 18, 1850, chap. 60), are not in conflict with the provisions of the Constitution in relation to the writ of *habeas corpus*. *Opinion of Sept.* 18, 1850, 5 Op. 254.

15. The expressions used in the last clause of the sixth section of the bill, that the certificate therein alluded to "shall prevent all molestation" of the persons to whom granted, "by any process issued," &c., probably mean only what the act of February 12, 1793, chap. 7, meant by declaring a certificate under that act a sufficient warrant for the removal of a fugitive, and do not mean a suspension of the writ of *habeas corpus*. *Ibid.*

16. There is nothing in the bill inconsistent with the Constitution, nor which is not neces-

sary to redeem the pledge which the Constitution contains, that fugitive slaves shall be delivered up on the claim of their owners. *Ibid.*

17. A marshal of the United States, when called upon to serve due process for the arrest of an alleged fugitive from service, has no absolute right to demand a bond of indemnity as the consideration of making service. *Opinion of Dec.* 16, 1853, 6 Op. 230.

18. Such bond may lawfully be given by the claimant; but if he refuses, and the marshal thereupon refuses to proceed, the latter will be responsible in damages or not according as the proofs may appear of the claimant's right of reclamation of service in the case. *Ibid.*

19. The constitutional right of a citizen of the United States to reclaim a fugitive from his lawful service extends not only to the States and to the organized Territories, but also to all the unorganized territorial possessions of the United States. *Opinion of Feb.* 18, 1854, 6 Op. 302.

20. If, in such territory, there be no commissioner of the United States to act, the claimant may proceed by recaption without judicial process. *Ibid.*

21. Any such fugitive from service in the Indian country is there unlawfully, and as an intruder is subject to arrest by the Executive authority of the United States. *Ibid.*

22. Such fugitive cannot be protected from extradition by any Indian tribe or nation; for the Indians are themselves the mere subjects of the United States, and have no power in conflict with the Constitution of the United States. *Ibid.*

23. By the local law of the organized political communities of the Cherokees, Choctaws, and Chickasaws there is ample provision for the delivery up of fugitives from service in any of the States. *Ibid.*

24. The question of the domicile, nationality, or competent forum of a slave, depends on that of his master. *Opinion of June* 13, 1855, 7 Op. 278.

25. Hence, if a crime be committed by a slave in the Indian country, and his master is a citizen of the United States, he must be tried by the district court. *Ibid.*

26. But if the slave of a Cherokee commit a crime against a Cherokee, and in the Cherokee Nation, he is triable by the Cherokees. *Ibid.*

27. The so-called "protective regulations" established by Maximilian, as Emperor of Mexico, for the government of workingmen brought into the country by immigrants, constitute a law for the enslavement of such workingmen. *Opinion of Oct.* 21, 1865, 11 Op. 373.

28. No award can be made under the second section of the act of July 28, 1866, chap. 296, to the persons enlisted as slaves. *Opinion of Nov.* 13, 1866, 12 Op. 95.

SLAVE TRADE.

See also SLAVES.

1. It is against public policy to dispense with prosecution for violation of the law to prohibit the slave trade. *Opinion of Sept.* 8, 1819, 5 Op. 717.

2. By the act of March 22, 1794, chap. 11, "to prohibit the carrying on the slave trade from the United States to any foreign place or country," the collector of customs cannot require a bond as a prerequisite to giving a clearance, except upon the oath or affirmation of some citizen. *Opinion of Oct.* 8, 1819, 1 Op. 312.

3. The act of March 3, 1819, chap. 101, entitled "An act in addition to the acts prohibiting the slave trade," does not authorize the President to appropriate any part of the sum therein specified to the purchase of land on the coast of Africa or elsewhere for the purpose of a settlement, nor to the transportation of free people of color to Africa, nor to the purchase of carpenter's tools, for the purpose of making a settlement in Africa, nor to the payment of the salary and expenses of transporting an agent from this country to Africa. *Opinion of Oct.* 14, 1819, 1 Op. 315.

4. The President should not assume the responsibility of exercising inferential duties under that act. *Opinion of Oct.* 16, 1819, 1 Op. 317.

5. Although the officers and crew who seized the Carmelita for the violation of the slave laws are entitled to a moiety of the proceeds of that vessel, it is doubtful whether it would be consistent with the respect due to the district court of Georgia, which has decided otherwise, to question its decision on the *ex parte* statement of an interested individual. *Opinion of Dec.* 16, 1819, 5 Op. 719.

he act of March 3, 1819, chap. 101, ap- all negroes previously brought into the States contrary to the provisions of any acts of Congress on the subject and not d of by State laws. *Opinion of Feb.* 2, Op. 334.

'hen the equipment of a vessel is adapted slave trade, that fact, with other circum- may be probable cause for a seizure. *of May* 19, 1820, 5 Op. 724.

y the act of March 2, 1807, chap. 22, the ation of slaves from Africa or elsewhere ie United States, or any place within urisdiction, is prohibited under severe es; and the importer and all persons ig under him are therein declared to have to the negroes imported, nor to their s. *Opinion of Jan.* 20, 1821, 1 Op. 447.

y the same act it is left to the legisla- f the several States to regulate the man- which negroes thus imported shall be d of. *Ibid.*

It is the duty of every good citizen, who e apprised of a breach of this law, to ompt and immediate steps for the seiz- the negroes, and to inform the governor State that he may give directions for the l of them. *Ibid.*

The statute of Georgia, passed 19th De- , 1817, making the regulations contem- by the law of Congress, is not unconsti- l. *Ibid.*

The Executive may apply to the support cans, seized in his efforts to prohibit the rade, such portion of the $100,000 ap- ted for carrying the prohibitory laws ect as may be necessary for that purpose. *of Jan.* 27, 1821, 5 Op. 728.

The bringing to the port of New York on schooner a passenger from Tobago, who th him a free colored servant, hired to his mother, with his assent, and who ith him to live with and serve him in ork, is not a violation of the slave laws. *of Aug.* 22, 1821, 5 Op. 736.

The act of April 20, 1818, chap. 91, pro- g the slave trade, does not prohibit the of slaves who left the United States with wners, and intending to return. *Opin- Nov.* 5, 1821, 1 Op. 503.

Where a French vessel, with Africans on unlawfully taken from their native land, ptured by pirates and from them capt- ured by an American vessel and brought into port, and a demand for the Africans was made by the French minister with a view to their restoration: *Held*, that the application was well founded and should be acceded to. *Opinion of Jan.* 22, 1822, 1 Op. 534.

16. A vessel under forfeiture for having violated the laws prohibiting the slave-trade remains subject to the forfeiture in the hands of subsequent purchasers; and the President will not interpose in any suit brought against the vessel on that account. *Opinion of Aug.* 20, 1823, 1 Op. 619.

17. The act of the United States schooner Grampus capturing and bringing in for adjudication, under the act of 3d March, 1819, chap. 101, the Spanish vessel Phœnix, with Africans on board, was not a violation of the laws concerning the slave-trade. *Opinion of Aug.* 18, 1830, 2 Op. 365.

18. Whether the Africans can be delivered to a claimant whose title to them is deduced from a traffic which is equally forbidden by the laws of his own country and of ours, is a question which ought to be referred to the highest judicial tribunal. *Ibid.*

19. If the owner of slaves remove with them to another country, with the view to a permanent settlement, and there remain several years, he cannot lawfully bring them into this country again. *Opinion of Dec.* 20, 1831, 2 Op. 479.

20 Where the American consul at Havana, to whom an American brig reported herself, suspected her papers to be fraudulent, and not such as to entitle her to the protection which belongs to vessels sailing under the American flag, and ordered the commander of a ship of war, lying at that port, to seize and detain her until the Government could be advised of the facts and direct as to the course to be adopted; and a correspondence having ensued between said consul and the captain-general of Cuba, disposing of the question of the violation of the sovereignty of Spain, in making the seizure in the port of Havana; and the question under the several navigation acts and the laws to prohibit the slave-trade being presented as to the legality of the seizure, and the course to be pursued under the circumstances: *Held*, that whenever there is just cause to believe that any merchant-vessel is engaged in an illicit trade a public vessel has the right to de-

tain her until our Government can act upon the subject; and that question of the violation of the sovereignty of any foreign government in nowise affects the question in respect to the liability of the suspected vessel to seizure under such circumstances. *Opinion of Jan.* 12, 1839, 3 Op. 405.

21. Steamboats and other vessels passing from Pontchartrain, by Lake Borgne and Pascagoula Bay, to Mobile, and touching on their passage at intermediate places, are not to be considered as sailing coastwise, within the meaning of the act of 2d March, 1807, chap. 22, to prohibit the importation of slaves. *Opinion of April* 16, 1840, 3 Op. 512.

22. Nor are vessels passing on any river or inland bay of the sea within the jurisdiction of the United States, within the meaning of that act. *Opinion of July* 29, 1840, 3 Op. 581.

23 The President has no authority to erect buildings for the reception of transported Africans. *Opinion of Dec.* 4, 1842, 4 Op. 139.

24. The selling of an American vessel in the port of Rio Janeiro to a slave-dealer, deliverable on the coast of Africa, is not of itself an aiding or abetting of the slave-trade. The vendor must not lend assistance to such slave-dealer by navigating the vessel to the coast of Africa upon an outward slave-trade voyage; for, if he does, he becomes thereby a participant in the trade, and, as such, is subject to punishment; but if he only make a *bona fide* sale of his property, deliverable upon that coast or elsewhere, he does not incur any responsibility. *Opinion of Aug.* 29, 1843, 4 Op. 242.

25. If an American citizen charter his vessel for the prosecution of a slaving voyage, he will be guilty of a violation of the slave-trade acts; but if he charter his vessel for the prosecution of a voyage which is *prima facie* innocent, the fact that it may be converted to an inhibited ulterior purpose will not expose him to penalty, or his vessel to forfeiture. *Ibid.*

26. The President has authority to make all the regulations and arrangements that he may deem expedient for the safe-keeping, support, and removal beyond the limits of the United States of all such "negroes, mulattoes, and persons of color" as shall be taken from slavers by the armed vessels of the Government. *Opinion of May* 12, 1847, 4 Op. 567.

27. And all negroes, mulattoes, and persons of color adjudged by competent tribunals to have been imported into the United States contrary to the provisions of the several acts to prohibit the slave-trade, and committed to the custody of marshals pursuant to such adjudications, are subject to his orders. *Ibid.*

28. It having been ascertained by the verdict of a jury that the two slaves brought into the port of New Orleans in the brig Titi were so brought in violation of the acts prohibiting the slave-trade, the President is called upon to exercise the authority so conferred. *Ibid.*

29. Americans who have participated in the slave trade in foreign ports are indictable in any district of the United States in which they may be found. *Opinion of Nov.* 17, 1851, 5 Op. 454.

30. The President may make such regulations as he deems expedient for the keeping, support, and removal of negroes captured and delivered to a marshal of the United States under the act of March 3, 1819, chap. 101, to prohibit the slave trade. *Opinion of March* 18, 1859, 9 Op. 302.

31. He may allow compensation to the marshal for the duties required of him beyond his commissions for disbursements, and such compensation is payable out of any appropriations to carry the act into effect. *Ibid.*

32. The marshal's accounts are not required to be certified by a judge under the act of August 16, 1856, chap. 124, nor to be taxed under the act of August 31, 1852, chap. 108, but should be certified and taxed in accordance with such regulations as the President may deem expedient for their authentication. *Ibid.*

33. The compensation is to be made in accordance with the regulations prescribed by the President for the safe-keeping, support, and removal of the negroes, and not by analogy to any fees prescribed by the act of February 26, 1853, chap. 80. *Ibid.*

34. The judiciary fund is not applicable to such charges, and they can only be paid out of a special appropriation by Congress for the purpose of carrying into effect the act to prohibit the slave trade. *Ibid.*

35. The act of February 28, 1803, chap. 10, prohibiting the importation of certain persons of color into certain States of the Union, is not repealed by the thirteenth amendment of the Constitution, or by the civil rights act of April 9, 1866, chap 31. *Opinion of June* 5, 1868, 12 Op. 413.

36. The laws of Florida of November 22, 1829, and February 10, 1832, so far as they apply to colored British subjects, are not repugnant to the constitutional amendment or to the civil rights act. *Ibid.*

SMITHSONIAN INSTITUTION.

See also BEQUEST OF JAMES SMITHSON.

1. The Attorney-General is by designation of person a member of the Smithsonian Institution; but it is not his duty individually, and as Attorney-General, to give advice to the regents of that institution. *Opinion of April* 21, 1853, 6 Op. 24.

2. The objects of natural history belonging to the Government are to be placed in the Smithsonian Institution. *Opinion of June* 10, 1857, 9 Op. 46.

SOLDIERS' HOME.

See also NATIONAL ASYLUM FOR DISABLED VOLUNTEERS; NATIONAL MILITARY AND NAVAL ASYLUM.

1. The appropriation for a military asylum for the relief and support of invalid and disabled soldiers of the Army of the United States, made by the act of 3d March, 1851, chap. 25, includes the unclaimed extra pay allowed to soldiers by the fifth section of the act of 19th July, 1848, chap. 104. *Opinion of June* 26, 1851, 5 Op. 385.

2. It is to take effect, however, only according to the provisions of the seventh section of the act, and to be afterwards repaid by the commissioners of the asylum upon demand of the heirs or legal representatives of the deceased. *Ibid.*

3. The act establishing the military asylum does not constitute the commissioners a corporation, with capacity to sue and be sued. *Opinion of July* 12, 1851, 5 Op. 398.

4. Section 7 of the act of 3d March, 1851, chap. 25, to found a military asylum, appropriates all moneys belonging to the estates of deceased soldiers remaining unclaimed for three years subsequent to the soldier's death, so that such moneys may be drawn from the Treasury without further special appropriation. *Opinion of Feb.* 16, 1853, 5 Op. 677.

5. The Soldiers' Home, in the District of Columbia, has no right under section 4818 Rev. Stat. to receive, as "moneys belonging to the estates of deceased soldiers," the amounts to which their widows, children, &c., are entitled by virtue of the provisions of the fifth section of the act of July 19, 1848, chap. 104, and which "are or may be unclaimed for the period of three years subsequent to the death of such soldiers." *Opinion of Dec.* 16, 1879, 16 Op. 409.

6. Upon the same grounds and considerations on which the foregoing ruling proceeds: *Held*, also, that the Soldiers' Home derives no right under section 4818 Rev. Stat. to receive the extra pay provided by the act of February 19, 1879, chap. 90, where the same remains unclaimed as aforesaid by the widows, children, &c., of deceased soldiers who were entitled thereto. *Ibid.*

SOLICITOR OF THE TREASURY.

1. The Solicitor of the Treasury may grant indulgences upon custom-house bonds in the form of instructions to district attorneys who shall have received them for prosecution, in such cases and on such terms as shall be deemed advantageous to the United States. *Opinion of June* 27, 1837, 3 Op. 247.

2. And although the Solicitor has no jurisdiction of bonds until they are placed in the hands of district attorneys, he may, in proper cases, give the instructions conditionally in advance, as to the course to be pursued. *Ibid.*

3. The Solicitor is charged with such trusts as that created by the assignment of Swartwout's interest in the Maryland and New York Iron and Coal Company, and may do whatever any other trustee may do in a court of chancery. *Opinion of Dec.* 14, 1842, 4 Op. 135.

4. The act of 29th March, 1830, chap. 153, gives to the Solicitor *express* authority to dispose of *real estate*, not personal; but personal is necessarily implied, for *omne majus continet minus*. *Ibid.*

5. The law has invested the Solicitor with a plenary discretion to suspend the execution of a writ of *fieri facias*, under circumstances which appear to render such a course expedient and proper. *Opinion of Feb.* 14, 1844, 4 Op. 309.

6. The Solicitor of the Treasury, by virtue

of sections 3749 and 3750 Rev. Stat., has charge of, and, with the approval of the Secretary of the Treasury, power to rent or sell lands acquired in satisfaction of judgments on bonds of internal-revenue collectors. *Opinion of Sept.* 25, 1878, 16 Op. 144.

7. Sections 3624, 3625, and 3217, Rev. Stat. (the last-mentioned section applying solely to collectors of internal revenue) have for their object the enforcement of the liabilities of officers who are accountable for public money; and though extending to revenue officers, they cannot properly be regarded as revenue laws. *Ibid.*

8. Hence real estate, acquired by virtue of proceedings thereunder against a collector of internal revenue, cannot be considered as acquired "in payment of debts arising under the laws relating to internal revenue" within the meaning of section 3208 Rev. Stat. The provision in that section, just adverted to, refers to real estate acquired in payment of fines, taxes, penalties, and forfeitures incurred under the internal-revenue laws. *Ibid.*

9. In making abatements, under section 4 of the act of June 14, 1878, chap. 192, of the purchase-money due from purchasers of lots of land at Harper's Ferry, sold by the Government in November, 1869, the Solicitor of the Treasury is not bound to adopt the present market value of the lots as a standard and abate the original purchase price down to that value. Yet he has power so to do; or, if he shall deem a fixed rate of deduction (as one-fourth or one-third of the purchase-money) proper, he may make the abatements accordingly. *Opinion of Oct.* 1, 1879, 16 Op. 383.

SOUTH PASS OF THE MISSISSIPPI RIVER.

1. The conditions imposed by the second *proviso* in section 4 of the act of March 3, 1875, chap. 134, viz, "unless the said Eads and his associates shall secure a navigable depth of 20 feet of water *through said pass* within thirty months," &c., and "unless the said Eads and his associates shall secure an additional depth of not less than two feet during each succeeding year thereafter until 26 feet shall have been secured," &c., operate to bind Eads and his associates, on pain of forfeiture of their privileges, &c., to secure a navigable depth of 20, 22, 24, and 26 feet, within the periods designated, through the channel over the shoal at the head of the pass and likewise over the bar at its mouth; and, by necessary implication, also to secure a navigable width of the required depth. *Opinion of Jan.* 17, 1877, 15 Op. 183.

2. The provisions in other parts of said act requiring specified depths and widths, varying from 20 feet in depth by 200 feet in width to 30 feet in depth by 350 feet in width, relate solely to the work at the mouth of the pass. *Ibid.*

3. So soon as the depth and width required by those provisions for payment of any installment are obtained, the payment of such installment may then be made, if no forfeiture has been incurred under the conditions contained in said *proviso*. *Ibid.*

4. It was intended by section 2 of the act of June 19, 1878, chap. 313, to make provision for remunerating Captain Eads for what had then been done by him in the work of improving the South Pass of the Mississippi River: and by section 3 of the same act it was intended to provide for advances to be made to him as the work progressed thereafter. *Opinion of Sept.* 17, 1878, 16 Op. 129.

5. The words "construction" and "prosecution," as used in section 3, have the same meaning. It is sufficient, under that section, to entitle Mr. Eads to payment if it appears that the materials are actually furnished in such manner that the United States can at once have the benefit of them in the structure, or that the labor is actually done, or the expenditures actually incurred, in the prosecution of the work, of which the Government can immediately have the benefit. *Ibid.*

6. The phrase in section 3, viz, "to pay for materials furnished, labor done, and expenditures incurred," &c., does not include materials, &c., other than such as are furnished, &c., after June 19, 1878. Materials are "furnished" when they are upon the ground and immediately available for use in the structure. *Ibid.*

7. The words "expenditures incurred" do not mean liabilities incurred; they signify payments or expenditures of money actually made. An expenditure made subsequently to June 19, 1878, in discharge of a liability incurred

previous to that date, would not be within section 3. *Ibid.*

8. The word "properly," as employed in the first *proviso* in that section, means actually done in the prosecution of the work by Captain Eads according to his plans; it does not modify the provision in the act of March 3, 1875, chap. 134, that he "shall be untrammeled in the * * design and construction of said jetties," &c. *Ibid.*

9. Section 3 of the act of June 19, 1878, chap. 313, contemplates that the "materials furnished," payment for which is thereby authorized, shall be free from any lien, claim, or charge thereon after the payment is made. Accordingly when payment is about to be made for such materials thereunder, the officer in charge should be satisfied that they are free from any lien, claim, or charge in favor of third parties, or, if any such lien, claim, or charge exists, that the payment is immediately applied to satisfy the same. *Opinion of Sept.* 21, 1878, 16 Op. 133.

10. The Secretary of War is authorized, under section 3 of the act of June 19, 1878, chap. 313 (the requirements of the statute being complied with), to draw his warrant in favor of James B. Eads to pay for materials furnished, labor done, and expenditures incurred during the month, without regard to other parties claiming to be his assignees. *Opinion of Oct.* 3, 1878, 16 Op. 154.

11. The introduction of the word "assigns" in the acts of March 3, 1875, chap. 134, and June 19, 1878, chap. 313, relating to the work undertaken by Mr. Eads (as, *e. g.*, in the following clauses of the former act: "to pay to said Eads, or to his assigns, or legal representatives," "payable to said Eads, his assigns, and legal representatives," "shall be released and paid to said Eads, his assigns, or legal representatives;" and also in the following clauses of the latter act: "in favor of James B. Eads, his assigns, or legal representatives," "in favor of said James B. Eads, his lawful assigns, or legal representatives," &c.), was not intended to withdraw the transfer or assignment of claims arising thereunder from the operation of the general law respecting transfers or assignments of claims against the United States, contained in section 3477 Rev. Stat. *Ibid.*

12. Where the word "assigns" occurs in those acts, it is used in a cognate sense with the words "legal representatives" with which it is associated. It means assignees in law—that is, those upon and in whom the right is devolved and vested by law, such as assignees in bankruptcy. *Ibid.*

13. The "relinquishment of all claim to the deferred payment," required by the third section of said act of June 19, 1878, to be filed with the Secretary of War, need be given by no one except Mr. Eads himself in order to secure to the United States a full and complete discharge of, or a bar to, so much of the claim as is relinquished. *Ibid.*

14. Section 3 of the act of June 19, 1878, chap. 313, does not authorize disbursements thereunder to pay debts of Mr. Eads contracted previously to the date of the act. *Opinion of Dec.* 2, 1878, 16 Op. 221.

15. By the use of the words "through said jetties," or "through the jetties," in section 9 of the act of March 3, 1879, chap. 181, Congress did not intend to reduce the limit in length of the channel which, under the act of March 3, 1875, chap. 134, it was incumbent upon Mr. Eads to construct between the South Pass and the Gulf of Mexico. Those words refer to the channel embraced in the field of operations at the mouth of the pass, but are not meant to limit the length of the channel to that portion which is included within the walls of the jetties or bounded by either wall. This channel still remains a channel from the South Pass to the Gulf of Mexico. *Opinion of April* 18, 1879, 16 Op. 306.

16. In considering whether the payments contemplated by the act of March 3, 1879, chap. 181, to be made to Mr. Eads upon his obtaining a channel by the action of the jetties of a particular depth and width, should be made, the Secretary of War is not only to consider whether the channel from the South Pass to the Gulf of Mexico complies with the requirements of that act, but also whether the conditions of the statute in other respects have been complied with (as, for example, those requiring a specific depth by a certain time through the shoal at the head of the pass). *Ibid.*

17. Though the terms of the *proviso* to section 4 of the act of March 3, 1875, chap. 134, are in the nature of conditions, which must be performed by Mr. Eads before he is entitled to

receive the payments provided in other portions of the act when the several depths and widths of channel there specified shall have been obtained, yet if, when demand for any such payment is made, all the conditions *then* required to be performed by him have been performed, he is entitled to the payment, notwithstanding other conditions remain to be complied with by him in the future. *Opinion of May* 17, 1879, 16 Op. 336.

18. The following facts being assumed, viz: that on April 7, 1879, a channel was obtained by Mr. Eads at the mouth of the South Pass, between the deep water of the pass and the deep water of the Gulf of Mexico, 25 feet deep and not less than 230 feet wide at the bottom, and that a channel existed through the pass including the shoal at its head 22 feet deep and of a navigable width: *Held*, that Mr. Eads is entitled to the payment of $500,000 provided by section 9 of the amendatory act of March 3, 1879, chap. 181, "when a channel shall have been obtained by the action of the jetties, &c., 25 feet in depth, and not less than 200 feet in width at the bottom, through said jetties;" the conditions in the *proviso* aforesaid not requiring that he shall have obtained, up to that time, through the pass and over the shoal, a greater depth than 22 feet, with a navigable width. *Ibid.*

19. A "navigable width," as contemplated by said act of March 3, 1875, is a depth sufficiently wide to permit vessels, moved either by sails or steam, to pass each other in the channel formed through the pass and the shoal at its head. *Ibid.*

20. Upon consideration of the provisions of the acts of March 3, 1875, chap. 134, June 19, 1878, chap. 313, and March 3, 1879, chap. 181, and assuming that the conditions in the *proviso* to section 4 of the act of 1875 relating to the pass itself and the shoal at its head had been complied with on April 7, 1879, and that on that day a depth of 25 feet with a width of 200 feet had been obtained in the channel between the jetties at the mouth of the pass: *Held*, that Mr. Eads is entitled to the payment of $500,000 under section 9 of the act of 1879, notwithstanding that the width of the channel has since been diminished. *Opinion of May* 24, 1879, 16 Op. 345.

21. The provisions of the act of March 3, 1875, chap. 134, and of the amendatory acts of June 19, 1878, chap. 313, and March 3, 1879, chap. 181, in so far as they relate to the payments to Mr. Eads, restated; and *held*, that (upon the assumption that he has obtained a channel of 26 feet in depth and 200 feet in width from the deep water of the South Pass to the deep water of the Gulf of Mexico, including the requisite depth through the pass and over the shoal at its head, and has complied in all other respects with his contract) he is entitled to receive the sum of $500,000, under the provisions of the said act of March 3, 1879. *Opinion of June* 28, 1879, 16 Op. 362.

22. Whether or not the use of dredge-boats is appropriate and allowable as an "auxiliary" for the maintenance of the channel through the jetties at the South Pass of the Mississippi is a matter for the Secretary of War to determine upon the information and opinion of the officers of the Engineer Corps. *Opinion of Nov.* 12, 1879, 16 Op. 392.

23. The words "quarterly" and "annual" in the act of March 3, 1875, chap. 134, in their application to the payments to Mr. Eads for maintenance of the channel (after its completion) through the South Pass, have reference to the time during which the completed channel is maintained, excluding from the computation of such time all periods of failure to maintain the channel. *Ibid.*

24. Accordingly, where a quarter (three calendar months), commencing from and after the completion of the channel, had expired on October 9, 1879, during which period the channel was maintained as required by the statute, with the exception of twenty days of failure: *Held*, that the quarterly payment provided for by said act was not demandable until October 28, 1879; when (if in the mean time the channel was maintained, but not otherwise) such payment became due. *Ibid.*

25. Capt. James B. Eads is not entitled to interest on the $1,000,000 retained by the United States (under the provisions of the act of March 3, 1875, chap. 134) as security for the maintenance of the completed channel of the required width and depth through the South Pass of the Mississippi, for any period of time occurring after the completion of the channel during which he has failed to maintain the channel. Every such period of failure must be excluded in computing the annual interest payable on said $1,000,000, just as the

same is to be excluded from the quarterly or annual payments provided for. *Opinion of Jan.* 20, 1880, 16 Op. 420.

STATE DEPARTMENT.

See also EXECUTIVE DEPARTMENTS; SECRETARY OF STATE.

1. Counsel, specially employed by the Secretary of State to aid the district attorney in the prosecution of persons accused of being engaged in illegal military enterprises in Texas, should be paid out of the funds of the State Department. *Opinion of March* 9, 1854, 6 Op. 355.

2. The Secretary of State has no power to appoint a commission or board to determine how much money a foreign prince shall pay to counsel in the United States for professional services. *Opinion of March* 17, 1854, 6 Op. 386.

3. Congress, by act of May 31, 1848, chap. 52, authorized the Secretary of State to purchase of Mrs. Madison "all the unpublished manuscript papers of James Madison, now belonging to and in her possession," for a certain sum of money. Mrs. Madison conveyed and delivered to the Secretary of State such papers as she understood to be intended by the act, but without schedule or inventory, and they were so accepted and paid for by the Secretary. Meanwhile, other manuscripts of Mr. Madison remained in her possession, and were disposed of by her son and executor: *Held*, that the contract, and delivery, and acceptance of manuscripts, with accompanying explanation, between Mrs. Madison and the Secretary of State, disposed of the question of what manuscripts were intended by the act of Congress. *Opinion of April* 14, 1855, 7 Op. 105.

4. Miscellaneous expenditures, incurred by order of the State Department for the purpose of preserving the neutrality of the United States, are chargeable to the funds of that Department. *Opinion of Aug.* 24, 1855, 7 Op. 398.

STATE OFFICER.

In 1864 a judge of a State court of Louisiana complained to the President that the governor of the State (Hahn) had removed him wi notice or cause from his office: *Held*, th State judiciary had jurisdiction of the and that the President had no legal autl in the premises. *Opinion of Oct.* 14, 18(Op. 116.

STATE PROCESS.

1. Process issued under the authorit State cannot legally obstruct, directly c directly, the operations of the United S Government. *Opinion of Jan.* 3, 1876, 1 524.

2. Where process was issued by a co the State of Colorado for the arrest of an I agent who was charged with the comm of a crime against the laws of the State *vised*, that he (being within the terri limits and jurisdiction of the State, alth upon an Indian reservation) is subject t process of the State, and that he cann sustained in resisting the same. *Opin Oct.* 19, 1880, 16 Op. 571.

STATE TAXES.

See also TAXES.

1. Neither the city council of New Orl nor any department of the government c Territory of Orleans, can legally tax the erty of the United States within that T tory. *Opinion of April* 28, 1806, 1 Op. 1

2. Grounds purchased in any State, the consent of its Legislature, for the s forts, magazines, arsenals, dock-yards, other needful buildings, can neither be t by the State nor by the municipality in w they are situated. *Opinion of Sept.* 8, 18 Op. 620.

3. As Congress have the exclusive jurisdi over all places purchased, by the consent o legislature of the State in which the same be, for the erection of forts, magazines, nals, dock-yards, and other needful build it follows that no State can have, or can any authority to tax them. *Opinion of Ap* 1851, 5 Op. 316.

4. A State cannot impose a tax upon the salary of a Federal officer, or upon the compensation paid by the United States to any person engaged in their service. *Opinion of Oct.* 2, 1860, 9 Op. 477.

5. *Semble* that, inasmuch as the title to the site of the national cemetery at Grafton, in West Virginia, is not yet vested in the United States, nor jurisdiction over the same ceded thereto by the State, the local laws imposing taxes on personal property may be enforced upon such site the same as elsewhere in the State, and, consequently, that no exemption in favor of personal property belonging to the superintendent of the cemetery can be claimed simply because it is found thereon. *Opinion of April* 9, 1872, 14 Op. 27.

6. With respect to land owned by the United States within the limits of a State, over which the State has not parted with its jurisdiction, the United States stand in the relation of a proprietor simply; and the State officers have the same right to enter upon such land, or into the buildings located there, and seize the personal property of individuals for non-payment of taxes thereon, as they have to enter upon the land or into the buildings of any other proprietor for the same purpose; such right being so exercised as not to interfere with the operations of the General Government. *Opinion of March* 24, 1873, 14 Op. 199.

7. The United States, in 1872, acquired title to a lot of ground in Saint Louis, Mo., by condemnation under a State statute, by the provisions whereof the jurisdiction of the State over the premises at the same time passed to the United States. Thereafter certain bills for unpaid taxes assessed for the years 1873, 1872, and previous years, were presented to the Treasury Department for payment, a lien on the premises for those taxes being claimed: *Held*, that the State, in parting with its jurisdiction, relinquished its lien on the land for the taxes, and that they are not a proper charge against the United States. *Opinion of Sept.* 13, 1876, 15 Op. 167.

8. A wagon, employed by its owner in transporting the mail from point to point within the city of Baltimore, is not exempt from local taxation by reason of its employment in the mail service. *Opinion of July* 25, 1877, 15 Op. 338.

STATUTES.

See also REVISED STATUTES.

I. *Generally.*
II. *Publication.*
III. *Construction.*
IV. *Repeal.*

I. Generally.

1. Acts of Congress containing no provision as to the time when they shall take effect go into effect upon their receiving the approbation of the President. *Opinion of April* 13, 1836, 3 Op. 82.

2. In general, the law does not notice fractions of a day; yet where questions of right, growing out of deeds, judgments, and other instruments bearing the same date, are concerned, the precise time of approval may be inquired into, to prevent laws from operating retrospectively. *Ibid.*

3. The joint resolution of Massachusetts, approved by the governor of that State on the 9th of April, 1836, is not such a law as is contemplated by the thirteenth section of the act of 23d June, 1836, chap. 115, to regulate the deposits of the public money. *Opinion of Dec.* 19, 1836, 3 Op. 166.

4. A provision of an act of Congress (section 27 of the act of March 3, 1855, chap. 175), as it stands on the rolls, enacts that a certain sum of money be paid to R. W. T., according to contract between him and the Menomonee Indians; but in fact, as the act passed to be enacted, it contained the following proviso, namely: "*Provided*, That the same be paid with the consent of the Menomonees:" *Held*, that, in his discretion, the President may abstain from proceeding to act under the general enactment, unless with the consent of the Menomonees, and submit the matter to Congress. *Opinion of May* 21, 1855, 7 Op. 166.

5. In general, acts of Congress are applicable, according to the subject-matter, in all parts of the United States. *Opinion of June* 22, 1855, 7 Op. 293.

6. Where it is not so, the fact is an exceptional one, and the exception is indicated by words either of exclusion or of inclusion in the act. *Ibid.*

7. The acts of Congress regulating inter-

course with the Indians are in full force in Oregon. *Ibid.*

8. When questions arise as to the applicability in Oregon of a particular clause of those acts, the question depends on the subject, and is wholly independent of any reference to a supposed test of the convenience or the assumed rights of the whites as against the Indians. *Ibid.*

9. The acts of Congress, as they stand approved by the President and enrolled in the Department of State, are conclusive evidence of the written law. *Opinion of March* 24, 1857, 9 Op. 1.

10. Neither the Journals of Congress nor any other species of extrinsic evidence can avail to strike anything out of the acts passed or interpolate anything into them. *Ibid.*

II. Publication.

11. The provision of the act of February 26, 1853, chap. 80, regulating the fees of clerks of the courts of the United States and other officers, which provides, among other things, a price for publishing any statute, notice, or order required by law or by the lawful order of any court, Department, bureau, or other person in any newspaper, applies only to such a publication in the case of judicial proceedings, and not to the publication of laws and treaties by the Secretary of State. *Opinion of June* 3, 1854, 6 Op. 502.

12. The publication of the laws and resolutions of Congress is not provided for in the sixth section of the act of May 18, 1866, chap. 85. *Opinion of Dec.* 13, 1866, 12 Op. 100.

13. There is no regulation of law for the publication of laws, treaties, and resolutions in the city of Washington, but such publication may be made at any place within the limits of the District of Columbia. *Ibid.*

III. Construction.

14. In ascertaining the just and reasonable construction of a law not unequivocally plain, the course of a Department acting under the law from its first existence, or other Departments acting under laws precisely similar, is entitled to respect and consideration. *Opinion of June* 10, 1807, 1 Op. 160.

15. *Semble* that the reference in the act of March 2, 1819, chap. 49, for the establishment of the Territory of Arkansas, to the act of June 4, 1812, chap. 95, relating to Missouri, includes the amendments to the latter act. *Opinion of April* 6, 1820, 5 Op. 724.

16. Acts of Congress should be so construed as to render their several provisions operative and in accordance with the intent of the makers of the law. *Opinion of Dec.* 8, 1829, 2 Op. 306.

17. Whenever an act of Congress has, by actual decision or by continued usage or practice, received a construction at the proper Department, and that construction has been acted on for a succession of years, it must be a strong and palpable case of error and injustice to justify a change in the interpretation to be given it. *Opinion of March* 22, 1833, 2 Op. 558.

18. In construing the act of March 3, 1835, chap. 46, for the continuance of the office of Commissioner of Pensions: *Held*, that where a future time is expressed in an act of Congress, like "two years from and after the 4th day of March next," the lawmakers are to be understood as speaking from the moment when the bill was approved by the President and became a law. Thus, in the above case, "the fourth day of March *next*" means the fourth day of the month of March next succeeding the date of the approval of the bill. *Opinion of Nov.* 3, 1836, 3 Op. 157.

19. In the act of May 10, 1842, chap. 27, for the relief of Clark Woodruff, the words "or his legal representatives" do not include assignees to whom he had previously conveyed part of the land. *Opinion of June* 6, 1842, 4 Op. 51.

20. According to the settled rules of interpretation, assignees are not legal representatives. Privies by representation, in the strict language of the law, are executors and administrators, &c., substitutes for the principal as to personal rights and responsibilities. The word does not even comprehend "heirs," much less "assignees." *Ibid.*

21. Where an appropriation was made by Congress (see act of March 3, 1852, chap. 104) expressly for opening or improving a maritime channel by a particular method mentioned: *Held*, that the specification is not to be so construed as to defeat or control the general object. *Opinion of April* 11, 1853, 6 Op. 19.

22. A provision of statute (see act of July 4, 1836, chap. 352) in terms authorizes the appointment, with consent of the Senate, of three "principal clerks" of specific designation of

positions: *Held*, that this provision was not repealed by a subsequent statute (act of March 3, 1853, chap. 97) for dividing clerks of the several Departments into classes upon examination. *Opinion of June* 10, 1853, 6 Op. 42.

23. Construction of a provision in the act of March 3, 1853, chap. 102, for the erection of a marine basin at Mare Island. *Opinion of Oct.* 12, 1853, 8 Op. 443.

24. Construction of section 18 of the act of March 3, 1853, chap. 97, making an appropriation to compensate Clark Mills for the execution of an equestrian statue of Andrew Jackson. *Opinion of May* 1, 1854, 8 Op. 448.

25. Declarations of members of Congress in debate on the passage of a law cannot be received to control the legal intendment of the law. *Opinion of May* 25, 1854, 6 Op. 464.

26. The clerks in the office of the navy agent at Washington are not embraced by the provisions of the act of April 22, 1854, chap. 52, which augments the salaries of certain clerks of the executive Departments. *Opinion of June* 8, 1854, 6 Op. 527.

27. The provisions of the act of March 3, 1853, chap. 102, directing the Secretary of the Navy to complete and carry into execution a certain contract for the construction of a floating dock at San Francisco, are mandatory in their legal effect. *Opinion of June* 17, 1854, 6 Op. 551.

28. An act of Congress (that of August 5, 1854, chap. 268) ceded to the city of Memphis "the grounds and appurtenances thereunto belonging, known as the Memphis navy-yard: *Held*, that these words carry real estate only, and do not cover the machinery, materials, and other property of the Government in the navy-yard. *Opinion of Aug.* 8, 1854, 6 Op. 654.

29. To that enactment was appended a proviso, in these words: "*Provided*, That the accounting officers of the Treasury" shall settle in a particular way the accounts of a navy agent and acting purser: *Held*, that this proviso does not constitute a condition of the cession, but that the two enactments are distinct in legal effect, they being connected together by the word "provided" only by negligence of legislative language. *Ibid.*

30. The provision of the act of August 4, 1854, chap. 247, increasing the pay of the rank and file of the Army, takes effect immediately. *Opinion of Aug.* 19, 1854, 6 Op. 665.

31. The act of Congress of March 3, 1855, chap. 173, entitled "An act further to amend the act entitled 'An act to reduce and modify the rates of postage in the United States, and for other purposes,'" takes effect at the commencement of the next fiscal quarter generally, but not until January in regard to the particular of requiring postmasters to place stamps on prepaid letters. *Opinion of March* 8, 1855, 7 Op. 58.

32. Congress (by act of May 31, 1848, chap. 52) authorized the Secretary of State to purchase of Mrs. Madison "all the unpublished manuscript papers of James Madison, now belonging to and in her possession," for a certain sum of money. Mrs. Madison conveyed and delivered to the Secretary of State such papers as she understood to be intended by the act, but without schedule or inventory, and they were so accepted and paid for by the Secretary. Meanwhile, other manuscripts of Mr. Madison remained in her possession, and were disposed of by her son and executor: *Held*, that the contract, and delivery, and acceptance of manuscripts, with accompanying explanations, between Mrs. Madison and the Secretary of State, disposed of the question of what manuscripts were intended by the act of Congress. *Opinion of April* 14, 1855, 7 Op. 105.

33. The phrase "from and after" a certain day, employed in the act of March 1, 1855, chap. 133, does not determine what its legal effect shall be, but only the time when that legal effect, whatever it is, shall commence. *Opinion of May* 25, 1855, 7 Op. 189.

34. The auxiliary verb "shall" in the act, wherever it occurs in reference to appointments, is only a word of time as to incidents, and never of command as to the main fact. *Ibid.*

35. The act has no general phrase of repeal, and no effect of repeal by implication, and repeals nothing except such specific things as it repeals in express terms. *Ibid.*

36. The phrase "who served in the Pacific Ocean on the coast of California and Mexico," in a provision of the act of August 31, 1852, chap. 109, for the benefit of the navy and marine corps, having received a particular construction: *Held*, that the same words, afterwards repeated in the act of March 3, 1853, chap. 102,

on the same subject, must receive the same construction. *Opinion of June* 26, 1855, 7 Op. 299.

37. The practice having grown up in Congress of late years to insert matters of general legislation, including allowances for private claims, the regulation of salaries, and many other objects, in the appropriations for the service of a future fiscal year, it becomes necessary now to disregard wholly the title and general tenor of such acts, and to scan and scrutinize each separate clause, and to construe each according to its own separate merits, and to give it immediate effect, if such be its natural signification. *Opinion of June* 30, 1855, 7 Op. 304.

38. Hence, where, in any such act, there is provision in general terms of the present tense, either for the addition to or the diminution of a salary, it takes effect from the approval of the act by the President. *Ibid.*

39. Under authority given by joint resolution of Congress of February 15, 1855, the President nominated General Scott to be Lieutenant-General by brevet, and he was confirmed and commissioned as such. Thereupon the question arose whether there was in force any law fixing the pay and allowances of the grade of Lieutenant-General. It was *held* that the provisions of the fifth section of the act of May 28, 1798, chap. 47, have been repealed, in so far as regards the office which it created, by subsequent statutes, and especially, if by no other effectually and finally, yet certainly by that of March 2, 1821, chap. 13; but that it does not clearly appear that the provisions of the fifth section of the act of May 28, 1798, as to the pay of the grade of Lieutenant-General, had been repealed, either expressly or tacitly, by any subsequent act, and the same is probably to be regarded as having remained in abeyance, capable of renewed legal efficacy, if that rank should at any time be re-established, without additional legislation as to its pay and emoluments. *Opinion of Aug.* 24, 1855, 7 Op. 400.

40. The enactment in the joint resolution that the "grade" of Lieutenant-General be "revived" does not have the consequential effect in law to revive the statute as such, provided the same had previously been repealed. But when a statute revives a statute grade or office it is to be intended, if nothing to the contrary appear, that the statute provision as to pay and emoluments previously annexed to the grade or office is by legal consequence revived, whether that provision of the statute had or had not been repealed. *Ibid.*

41. Hence, the joint resolution must receive one or the other of these alternative constructions: Either, first, it intends that the pre-existing provision of statute which fixed the pay of the grade of Lieutenant-General had never been repealed; that the law on that subject was dormant, awaiting the existence of an office and a person to which and to whom it should become applicable, the office being supplied by the resolution, and the person by his appointment to the office; or, secondly, it intends, assuming that the statute office of Lieutenant-General with its pay and emoluments once existed, but had been repealed or had fallen into desuetude, to revive that statute office, for this occasion, and in so doing to resuscitate the statute pay and emoluments of the office; and therefore there is now in force a law, in the fifth section of the act of May 28, 1798, fixing the pay of the grade of Lieutenant-General. *Ibid.*

42. Where the pension acts omit to make mention of representative persons, the latter are not entitled according to the tenor and true intendment of the acts. *Opinion of Feb.* 4, 1856, 7 Op. 619.

43. The Revolutionary pension acts have been so long misconstrued in this respect that it seems too late to return to their proper construction. *Ibid.*

44. Construction of the act of February 28, 1855, chap. 127, in respect of the pay of officers of the Navy promoted into vacancies occasioned by the retirement of their senior officers under that act. *Opinion of Feb.* 14, 1856, 7 Op. 640.

45. Construction of the act of July 27, 1854, chap. 149, for the relief of the widows and orphans of the officers and seamen of the schooner Grampus. *Opinion of Aug.* 8, 1856, 8 Op. 28.

46. A statute (see section 8 of the act of August 18, 1856, chap. 130) which merely authorizes the payment of a sum of money by one of the heads of Department is not mandatory either in fact or in amount. *Opinion of Aug.* 20, 1856, 8 Op. 39.

47. The provision in the act of August 18 1856, chap. 129, which authorizes the President to reconsider a thing lawfully done under

a previous act of Congress, is not mandatory in its legal effect. *Opinion of Aug.* 22, 1856, 8 Op. 41.

48. Distinction of effect between *authority* and *command* in statutes. *Opinion of Oct.* 14, 1856, 8 Op. 112.

49. The words "may" and "shall" in statutes have no fixed meaning of either authority or command. *Ibid.*

50. When private bills are inserted as amendments by one or the other House in the general acts of appropriations, such bills are to be construed most in the sense of the rights of the Executive, and of the branch of Congress which acquiesces in such irregular legislation. *Ibid.*

51. Construction of sundry acts making allowances to the Cherokee Indians of North Carolina. *Opinion of Nov.* 14, 1856, 8 Op. 182.

52. Administrative practice does not constitute final construction of the statutes nor conclude the proper head of Department, and still less the courts or the Attorney-General, when the matter comes before either of them as a naked question of law. *Opinion of Jun.* 6, 1857, 8 Op. 293.

53. An act of Congress (the act of March 3, 1857, chap. 108) which authorizes payment to an officer for his services "from the first day of January, eighteen hundred *thirty*-five, to the thirtieth June, eighteen hundred *thirty*-eight," will not authorize a payment for service rendered from Jan. 1, 1855, to June 30, 1858, however probable it may be that the word "thirty" was written by mistake for "fifty." *Opinion of June* 10, 1857, 9 Op. 50.

54. The intent of the legislature must be ascertained from the words of the law, without reference to the reports of committees or the speeches of members. *Opinion of Aug.* 11, 1857, 9 Op. 57.

55. All legislative grants, whether of money or of privileges, are and ought to be construed strictly against the grantees. *Ibid.*

56. Under the act of August 18, 1856, chap. 129, which made an appropriation for the erection of a custom-house at Ogdensburg, New York, with a *proviso* that no money should be expended if the duties collected there "do not equal the expense of collection": *Held*, that it is enough if the duties collected exceeded the expense of collection during the year in which the act was passed. *Opinion of Aug.* 27, 1857, 9 Op. 77.

57. The words of an act of Congress, and not the unexpressed intentions of its framers, govern its construction. *Opinion of Sept.* 29, 1857, 9 Op. 114.

58. As to the meaning of the words "actual service," in the *proviso* of section 5 of the act of July 19, 1848, chap. 104. *Opinion of Sept.* 11, 1858, 9 Op. 186.

59. When a question on a statute made to regulate the conduct of the courts arises incidentally before an executive Department the lead of the judges ought to be followed. *Opinion of Feb.* 11, 1859, 9 Op. 268.

60. Section 6 of the act of June 12, 1858, chap. 156, repealing all laws authorizing the sale of military sites which are or may become useless for military purposes, did not repeal the act of August 3, 1854, chap. 229, granting to a railroad company the right of way over the military reserve at Fort Gratiot. *Opinion of March* 11, 1859, 9 Op. 282.

61. The word "emolument" in our military statutes includes every allowance or perquisite annexed to an office for the benefit of the officer, and by way of compensation for services. *Opinion of March* 14, 1859, 9 Op. 284.

62. The construction of the acts of Congress so far as they relate to a Territory, properly belongs to the judges of the Territorial supreme court. *Opinion of March* 16, 1859, 9 Op. 292.

63. Section 3 of the act of March 3, 1859, chap. 76, does not require the deduction from an officer's sea-pay of money earned by his labor in other vocations. *Opinion of May* 12, 1859, 9 Op. 337.

64. The word "cruise" in section 3 of the act of March 3, 1859, chap. 76, means the whole period between the time when a vessel goes to sea and when she returns to the place where her crew are paid off and she is put out of commission. *Opinion of July* 27, 1859, 9 Op. 375.

65. The intent of a law is not to be learned by ascertaining the thought that may have been in the minds of those who passed it, unless the same thought is expressed in the law itself. *Opinion of July* 13, 1860, 9 Op. 437.

66. It is an established principle of inter-

pretation that every statute shall be confined in its operation strictly to the future. *Ibid.*

67. Laws reducing the price of work done for the Government have been uniformly construed as operating only upon work ordered after their passage. *Ibid.*

68. Under the act of August 1, 1842, chap. 118, authorizing agents and servants of the United States to pass free of toll over the Shenandoah bridge at Harper's Ferry, persons employed at the United States Armory are entitled, free of toll, to cross the bridge on animals or in vehicles belonging to themselves. *Opinion of Aug.* 13, 1860, 9 Op. 475.

69. The first proviso in the first section of the act of March 3, 1851, chap. 34, making appropriations for the naval service, does not authorize the allowance of rations to officers attached to and doing duty on receiving vessels. *Opinion of June* 10, 1861, 10 Op. 52.

70. Whenever an act of Congress has, by actual decision, or by continued usage and practice, received a construction in the proper Department, and that construction has been acted on for a succession of years, a change in the construction should not be made unless in a palpable case of error and injustice. *Ibid.*

71. The word "pay," as used in the act of July 24, 1861, chap. 14, for the relief of the widows and orphans of the officers, marines, &c., of the sloop of war Levant, means "pay proper," and does not include emoluments. *Opinion of June* 17, 1862, 10 Op. 284.

72. The word "established," in the act of April 2, 1862, chap. 53, prohibiting the allowance or payment of pensions, in certain cases, to the children of officers and soldiers in the Revolution, refers not to the intrinsic merits of a claim, but to the adjudication which has resulted in its approval and allowance. *Opinion of Sept.* 5, 1862, 10 Op. 336.

73. Under the twelfth section of the act of February 20, 1861, chap. 45, to carry into effect the convention between the United States and Costa Rica, &c., certified copies or duplicates of papers, filed in the State Department, and not translations, must be substituted by the commissioner for Costa Rica for the originals withdrawn by him. *Opinion of Feb.* 5, 1863, 10 Op. 450.

74. The term "person," as used in the ninth section of the internal-revenue act of July 13, 1866, chap. 184, and as explained in the forty-fourth section of that act, does not include a State. *Opinion of June* 28, 1867, 12 Op. 176.

75. It was not the intention of Congress by the *proviso* in the act of February 28, 1867, chap. 99, to put an end to the Portuguese mission, but simply to prohibit the payment of the salary for personal services of the minister. *Opinion of Oct.* 7, 1867, 12 Op. 275.

76. The words "under bond," in the eighth section of the act of March 28, 1854, chap. 30, have exclusive reference to, and are descriptive of, the goods, wares, and merchandise, and not the *warehouse*. *Opinion of June* 25, 1868, 12 Op. 430.

77. The word "compensation," in the fourth section of the act of July 16, 1866, chap. 200, includes pay and emoluments. *Opinion of Sept.* 12, 1868, 12 Op. 490.

78. The port-wardens of the port of New York, appointed under the State laws, are not the officers meant by the words "proper officers of the port or district," found in the fifty-second section of the act of March 2, 1799, chap. 22. The officers there meant are the customs officers of the port or district, appointed pursuant to the laws of the United States. *Opinion of May* 27, 1870, 13 Op. 244.

79. A statute should not be so interpreted as to require the aid or action of the officers of a State for its administration, unless its language is plain that State officers were intended to be employed in administering it. *Ibid.*

80. The presumption is that the officers mentioned in a United States statute, who are to carry out its provisions, are officers of the United States, if there are any officers of the United States such as are described in the statutes. *Ibid.*

81. Provisions of the act of July 1, 1870, chap. 210, for the improvement of water communication between the Mississippi River and Lake Michigan, construed in reference to the duties of the arbitrators authorized to be appointed thereunder. *Opinion of Oct.* 13, 1870, 13 Op. 333.

82. The term "disability," as used in the twenty-second section of the act of March 2, 1799, chap. 22, is comprehensive enough to embrace any cause whereby the surveyor becomes no longer capable of discharging the duties of his office, and in this sense it includes the case of a resignation. *Opinion of June* 17, 1873, 14 Op. 260.

83. The phrase "State-banking associations" used in the sixth section of the internal-revenue act of March 3, 1865, chap. 78, as amended by the act of July 13, 1866, chap. 184, comprehends not only associations organized under State-banking laws, but associations or partnerships formed by private agreement for the purpose of carrying on the business of banking. And it may also be taken to include a railroad company issuing scrip in the form of currency, where the issue by the company possesses the essential characteristics of a banking operation. *Opinion of Feb.* 23, 1874, 14 Op. 373.

84. The limitation imposed by the twenty-second section of the act of July 14, 1870, chap. 255, as to the *value* of "household effects" which are exempted from duty thereunder, ceased to be of force when the provision in the fifth section of the act of June 6, 1872, chap. 315, also exempting such articles from duty, took effect; the provision in the latter act wholly superseding that contained in the former act, relative to the exemption of household effects. *Opinion of April* 15, 1874, 14 Op. 386.

85. The prohibition contained in section 19 of the act of June 22, 1874, chap. 391, against compromising or abating any claim of the United States for any fine, penalty, or forfeiture incurred by a violation of the customs-laws, does not apply to such arrangements as are ordinarily made by district attorneys for obtaining the testimony of accomplices in *criminal cases*, whereby an assurance is given to the accomplice, who is to be used as a witness, of exemption from prosecution in case he acts in good faith and makes a full disclosure. *Opinion of Dec.* 12, 1874, 14 Op. 511.

86. The phrase "from and after the date of the passage of this act" used in section 1 of the act of February 8, 1865, chap. 36, and the phrases "from and after the passage," and "on and after the date of the passage," used in the second, fourth, sixth, and eighth sections of the same act, were employed simply as equivalents of each other, and are to be understood as identical in meaning and force. *Opinion of March* 10, 1875, 14 Op. 542.

87. In construing sections 1222 and 2062 of the Revised Statutes together, the latter must be understood as constituting an exception to the former; the rule of interpretation applicable thereto being, that where a general intention is expressed in a statute, and the statute also expresses a particular intention incompatible with the general intention, the particular intention is to be considered in the nature of an exception. *Opinion of May* 5, 1875, 14 Op. 573.

88. The second *proviso* in section 3 of the act of March 3, 1875, chap. 127, is amendatory of section 3019 of the Revised Statutes, and must be construed in connection with the latter section, not in connection with the enactment in which it is found; the two (*i. e.*, the *proviso* and section 3019), in effect, declaring that 10 per cent. on the amount of all drawbacks allowed by the statute shall be retained for the use of the United States, provided that of the drawback on refined sugars only 1 per cent. of the amount so allowed shall be retained. *Opinion of May* 8, 1875, 14 Op. 578.

89. By act of March 2, 1861, section 20, a duty of 20 per cent. *ad valorem* was laid on "sawed timber;" and by act of June 6, 1872, section 1, a certain duty per thousand feet was imposed on "sawed lumber." The Treasury Department construed the latter provision to supersede the former. Both provisions were, however, subsequently re-enacted in section 2504 Rev. Stat.: *Held*, that the construction of the Treasury Department was correct, and that the mere bringing forward into the Revised Statutes of the two provisions has not changed the previous state of the law. *Opinion of June* 19, 1875, 15 Op. 493.

90. *Semble* that the original dates of the provisions of the Revised Statutes must be considered in determining their effect upon each other, and that a previous decision of a court or a Department based upon the circumstance that one such provision is an earlier, and the other a later, expression of the will of Congress, binds as much as ever. *Ibid.*

91. Sections 3679 and 3732 Rev. Stat. should be construed together. The latter section authorizes the heads of the War and Navy Departments, in the absence of appropriations, to purchase or contract for clothing, subsistence, forage, fuel, quarters, or transportation, not exceeding the necessities of the current year. Such contracts are not within the prohibition of the former section. *Opinion of March* 21, 1877, 15 Op. 209.

92. The act of February 27, 1877, entitled "An act to perfect the revision of the statutes

of the United States," &c., must be deemed to take effect only from its date; there being nothing in its language which expressly, or by necessary implication, gives to it a retrospective operation. *Opinion of April* 7, 1877, 15 Op. 222.

93. The principle is well settled that statutes are to be construed as operating prospectively only, unless their language clearly and imperatively demands that retrospective effect should be given to them. *Ibid.*

94. The provisions of the act of March 3, 1877, chap. 119, by which the Secretary of War is "authorized to reopen the settlement made by the United States Government with the Western and Atlantic Railroad of the State of Georgia," &c., are mandatory. The word "authorized," as there used, confers a power, the exercise of which is not meant to be dependent upon the discretion of the Secretary, but to be imperative upon him when he is applied to by the party interested. *Opinion of April* 13, 1877, 15 Op. 621.

95. Under the amendment of section 3140 Rev. Stat., made by the act of February 27, 1877, chap. 69, the word "person," as used in chapter 4, of title 35, Rev. Stat., is to be understood as so including a corporation engaged in distilling spirits that it may give the bond and perform other acts required by the internal-revenue law of distillers, in its corporate capacity. The existence of a penalty in certain sections of that title, prescribing *imprisonment* as a part of the punishment, is not incompatible with an intent to include under the word person, as therein employed, a corporation. *Opinion of April* 23, 1877, 15 Op. 230.

96. The proceedings in Congress on the bill concerning the settlement made with the Western and Atlantic Railroad of Georgia are not admissible to control the words finally adopted by that body to convey its meaning in the act relating to the same matter (act of March 3, 1877, chap. 119). *Opinion of April* 24, 1877, 15 Op. 625.

97. The "public exigency" contemplated by section 3709 Rev. Stat. is one of *time* only. The provision in same section requiring articles or services to be obtained by "open purchase or contract at the place and in the manner in which such articles are usually bought and sold, or such services engaged between individuals," does not apply to a contractor with the United States. *Opinion of May* 3, 1877, 15 Op. 254.

98. The amendments of sections 2659 and 2660 Rev. Stat., made by the act of February 27, 1877, chap. 69, are not retroactive. That act takes effect, not from the date of the Revised Statutes which it amends, but from the date of its own enactment, except in a case where (as in the amendment of section 1375) the purpose to make it retrospective is distinctly indicated. (Opinion of April 7, 1877, 15 Op. 222, referred to and reaffirmed). *Opinion of May* 4, 1877, 15 Op. 259.

99. Statutes imposing disabilities are not to be extended by construction. *Opinion of Sept.* 6, 1877, 15 Op. 652.

100. Agreeably to the *intent* of Congress, the clause in the second section of the act of March 3, 1875, referring to the provisions of section 2 of the act of March 30, 1868, must be deemed to limit the operation of section 1223 Rev. Stat. *Opinion of Dec.* 11, 1877, 15 Op. 407.

101. The prohibition contained in the joint resolution of March 2, 1867 (the provisions of which are embodied in section 3480 Rev. Stat.), is applicable to claims for bounty land; the intent of Congress being to include therein all manner of claims and demands—not only pecuniary, but other claims as well. *Opinion of Feb.* 20, 1878, 15 Op. 451.

102. The words "restored to market," in section 3 of the act of March 3, 1877, chap. 125, entitled "An act to secure the rights of settlers upon certain railroad lands," &c., are controlled by the last clause in the same section, viz, "and opened to settlement and purchase under the homestead laws of the United States only." Those words, taken in connection with this clause, signify nothing more than a withdrawal of the lands from the condition of reservation in which they have been held by reason of the railroad grant referred to in the first section of the act. *Opinion of Oct.* 19, 1878, 16 Op. 181.

103. The provision in the act of December 15, 1877, chap. 3—viz, that "said bureau shall be closed"—is to be understood as allowing a reasonable time therefor after January 1, 1879. The expenses incident to such work may be defrayed from the appropriation in the act of June 20, 1878, chap. 359. *Opinion of Dec.* 30, 1878, 16 Op. 239.

104. Legislation is to be deemed to be prospective only, unless language be used leading, either directly or by fair inference, to the conclusion that it is to have a retrospective operation. *Opinion of Aug.* 23, 1879, 16 Op. 378.

IV. Repeal.

105. Implied repeals are not to be favored. *Opinion of June* 10, 1857, 9 Op. 46.

106. An earlier law is never to be taken as repealed by a later without words to that effect, unless they be so inconsistent that both cannot stand together. *Ibid.*

107. Where one statute is repealed by another statute, acts done in the mean time, while it was in force, endure and stand, and are good and effectual. *Opinion of Sept.* 30, 1867, 12 Op. 251.

108. On every act professing to repeal or interfere with the provisions of a former law, it is a question of construction whether it operates as a total or partial repeal. *Ibid.*

109. The act of July 27, 1866, chap. 284, repealed the fifth section of the act of March 3, 1851, chap. 32, so far as that section relates to the appraisers and assistant appraisers for the port of New York, but no further. *Opinion of Aug.* 17, 1870, 13 Op. 312.

STEAM-VESSELS.

See COMMERCE AND NAVIGATION, VI, VII; PASSENGER LAWS.

STOLEN PROPERTY.

1. T. A. R., clerk in a post-office, was indicted for purloining money from letters, but the jury on three successive trials failed to agree. On the arrest of R. bank notes found in his possession were seized by the officer on probable suspicion of being the stolen money or the proceeds thereof; but no part of this money has been identified as actually abstracted from the mails: *Held*, that if R. be acquitted, or the prosecution discontinued, the bank notes must be returned to him. *Opinion of March* 14, 1855, 7 Op. 74.

2. An innocent holder of a "seven-thirty" Treasury note, transferable by delivery, which was stolen and transferred when past due, is entitled to payment, as against the party from whom it was stolen. *Opinion of Sept.* 4, 1865, 11 Op. 332.

STOPPAGE IN TRANSITU.

1. H. D. Bacon, a member of the firm of Page & Bacon, of Saint Louis, and also of that of Page, Bacon & Co., of San Francisco, applied to the Postmaster-General for an order to the deputy postmaster of the city of New York that all the correspondence of the firm in San Francisco addressed to their several agents in the Atlantic and Western States, and daily expected in New York by the steamer bringing the mails from San Francisco, should be delivered to him, H. D. Bacon: *Held*, that the writer of a letter has no such general property in it as to entitle him in every case to reclaim it while *in transitu*. *Opinion of March* 28, 1855, 7 Op. 76.

2. Exceptional cases may exist of right to reclaim a letter in the analogy of the cases of stoppage *in transitu* by the law merchant; but all such cases are exceptional, each depending on its own special merits, and there is no authority in law for the issue of the order asked in this case of the Postmaster-General. *Ibid.*

STOPPAGE OF PAY.

See ARMY, XVIII; COMPENSATION, IX.

STORAGE.

See CUSTOMS LAWS, XI.

SUBSIDIARY SILVER COIN.

See SILVER COIN.

SUITS AND PROCEEDINGS IN COURTS.

1. It is lawful to serve either a civil or criminal process upon a person on board a British man-of-war lying within our territory. *Opinion of March* 11, 1799, 1 Op. 87.

2. The late collector at Savannah being in-

debted to the Government, an action at law should be brought against him for the apparent balance due. *Opinion of March* 31, 1824, 1 Op. 639.

3. The judiciary cannot enjoin the executive branch of the Government from performing any duty specially devolved on it by the legislature or by the Constitution of the United States. Yet there are cases in which the courts will be found a useful auxiliary to the Executive, and promotive of the purposes of justice. *Opinion of July* 27, 1824, 1 Op. 681.

4. The proceedings to be had on an injunction granted by the district judge of Georgia against further proceedings upon a warrant of distress issued from the Treasury Department, under the act of Congress of the 15th of May, 1820, chap. 107, should be the same as in other cases, except that no answer is necessary on the part of the United States. *Opinion of Aug.* 23, 1824, 1 Op. 694.

5. In every action brought upon a purser's bond for violation of his duties, his duties must be specified in the declaration. *Opinion of Jan.* 31, 1827, 2 Op. 50.

6. Judgments upon duty bonds against a surety are valid, although the suits were protracted until the principal obligor and cosurety became insolvent. Laches cannot be imputed to the Government. *Opinion of March* 29, 1827, 2 Op. 51.

7. The power of the President to order the discontinuance of a suit commenced in the name of the United States should be exercised only with the greatest circumspection and care, and never in a case in which a court of the United States has, by a positive act on its part, taken cognizance thereof, and thereby given countenance to the claim. *Opinion of July* 27, 1827, 2 Op. 53.

8. Private or extrajudicial caveats lodged with the commissioner of loans, when founded on some specific claim or lien on the stock created by the proprietor himself, ought to be respected. So, also, the process of the courts should be respected. *Opinion of Oct.* 20, 1828, 2 Op. 173.

9. An original bill, in the nature of a bill of review, is the proper proceeding to set aside a decree obtained by the production of forged documents. *Opinion of March* 25, 1830, 2 Op. 331.

10. Indictment is the proper proceeding to punish the cutting, &c., of live-oak reserved for naval purposes, under the first section of the act of March 2, 1831, chap. 66; and under the second section of that act, indictment and information. *Opinion of Dec.* 30, 1831, 2 Op. 494.

11. Punishment by the House of Representatives for an assault and battery on the person of one of its members is no bar to an indictment and conviction in the district court for the same act. *Opinion of June* 25, 1834, 2 Op. 655.

12. The punishment of General Houston by the House was for a breach of privilege and for contempt of the House; but the indictment and conviction were for a violation of the public law. *Ibid.*

13. In the States where the garnishment or trustee process is in general use, it may be resorted to to compel the appearance of officers of the Army and other agents of the Government before the civil tribunals to account for money due from them where they have become personally liable, and where they hold funds for the particular purpose. *Opinion of Aug.* 5, 1834, 2 Op. 661.

14. The Executive should not consent to place the Government of the United States, which is not liable without its special consent to be questioned in its own courts, to be made compulsorily accountable as stakeholder or garnishee to its debtors, their assignees, or creditors—at least without a judicial decision to that effect by the highest tribunal known to the laws. *Opinion of Nov.* 29, 1841, 3 Op. 718.

15. Payment of the mariners in Norfolk by the purser of the United States ship Constitution should be made, notwithstanding the attachment issued for their wages. *Ibid.*

16. No preliminary demand of payment is necessary to put in default a postmaster who omits to pay over the public funds in his hands at the expiration of each successive quarter of his service, and no proof of such demand having been made is requisite to the sustaining of an action against him. *Opinion of Jan.* 22, 1844, 4 Op 304.

17. As the title of M to land on which the United States have erected a fort at the mouth of Bayou Desprez and Lake Borgne and lands adjoining is invalid, the Solicitor of the Treasury should commence an action in behalf of

the Government to try the title, as M, being in possession, cannot, if he would, institute a suit against the United States to quiet his claim. *Opinion of Oct.* 22, 1851, 5 Op. 402.

18. During the war between the United States and the Mexican republic, while General Taylor occupied the line of the Rio Grande, one Lund undertook to set up a ferry across the river, in which he was interrupted by Major Ogden, of the United States, in obedience to the command of General Taylor: *Held*, that no action lay against Major Ogden for this act; *held*, also, that on a suit brought by Lund against him in the State of Texas, he not residing there, and having never held a domicile there, and no personal service in Texas having been made on him, and he not having property in the State; so also no valid judgment can be rendered, at least none which can be made effective out of the State of Texas. *Opinion of July* 27, 1853, 6 Op. 75.

19. Where an officer of the Army or Navy is sued on account of acts alleged to have been performed in the line of his duty, the Executive is to judge, in his discretion, whether the case is one of which the defense is to be assumed by the Government. *Ibid.*

20. In general it is not the duty of the United States to assume the legal defense by counsel of marshals and other ministerial officers of the law where these are sued for official acts. But the President of the United States, in the discharge of his constitutional duty to take care that the laws be faithfully executed, may, in his discretion, well assume, in certain cases, the defense of such ministerial officers. *Opinion of Nov.* 14, 1853, 6 Op. 220.

21. The right to do this cannot be limited to cases in which the *property* of the United States is concerned, but extends to other cases, more especially those affecting the constitutional security of the Government, whether in the relation of the United States to foreign governments or that of the States among themselves, or that of the States to the United States. *Ibid.*

22. In case of vexatious suits against marshals of the United States for lawful acts done by them in the extradition of fugitives from service, the President may authorize the employment of counsel in their behalf by the United States. *Opinion of June* 3, 1854, 6 Op. 500.

23. No remedy exists for the case of a civilian absconding with maps and collections which came into his possession in the State of Massachusetts, but which belong to the Government, except by ordinary action at law. *Opinion of Nov.* 7, 1854, 7 Op. 9.

24. Generally actions in behalf of the Government are brought in the name of the United States, not of any public officer. *Opinion of Feb.* 6, 1855, 7 Op. 50.

25. The form of procedure in the district courts of the United States is that of the respective States, subject to discretional change on the part of the courts of the United States. *Ibid.*

26. Rafael and Manuel Armijo sued out, in the Territorial court of New Mexico, process of injunction and mandamus against the governor as superintendent of Indian affairs, to compel him, out of the general moneys of the Government in his hands, as such, to pay to the petitioners indemnity for losses suffered by them through the depredations of the Apaches: *Held*, that the courts have no jurisdiction or authority over such moneys of the Government in the hands of the superintendent, either by injunction, mandamus, or any other process of law. *Opinion of March* 29, 1855, 7 Op. 80.

27. *Quære* whether parties have a right to file a bill in the name of the United States for the purpose of vacating a patent alleged to have been illegally issued. *Opinion of Feb.* 21, 1857, 8 Op. 400.

28. Where Congress made a grant to a railroad company of certain lands in Minnesota and repealed the act at the same session, the Secretary of the Interior was *advised*, in the absence of any possession on the part of the company of the lands or trespasses committed thereupon, that there was no reason that the United States should consent to bring an amicable action to try the title. *Opinion of March* 28, 1859, 9 Op. 317.

29. The right of removal given by the third and fourth sections of the act of May 11, 1866, chap. 80, attaches upon the filing of the petition, verified by affidavit, according to the fifth section of the act of March 3, 1863, chap. 81, without giving security for filing copies of the papers in the circuit court, and without giving security for the appearance of the defendant in that court. *Opinion of Jan.* 17, 1867, 12 Op. 109.

30. The Secretary of the Treasury is advised that the case of Dennistown & Co. should be allowed to proceed in the circuit court where it is pending. *Opinion of July* 10, 1867, 12 Op. 206.

31. Where an injunction was issued by the supreme court of the State of New York enjoining the depot quartermaster at New York City from paying to a contractor certain funds due him for the construction of certain quarters at David's Island, in New York Harbor: *Held*, that the injunction is inoperative as against the quartermaster. *Opinion of Jan.* 29, 1879, 16 Op. 257.

32. It is not competent to the State courts to enjoin officers of the executive Departments from executing the lawful orders thereof, whether they concern the payment of money for the performance of contracts with the United States or any other matter. *Ibid.*

33. In the above case, however, from considerations of comity between the State and National Governments: *Advised*, that (before determining whether or not payments should be made notwithstanding the injunction) application be made to the court for a dissolution of the injunction so far as the quartermaster is concerned. *Ibid.*

34. In 1853 certain proceedings were instituted in the district court for Cameron County, Texas, under an act of the legislature of that State, for the purpose of acquiring title to the site of Fort Brown, Texas, then occupied by the United States as a military post; but no authority for the institution of these proceedings was ever given by Congress. The value of the land was assessed by verdict of a jury at $50,000, but no judgment was then entered up. Long afterwards, on February 20, 1879, the court rendered a judgment, based on the verdict of the jury in 1853, for the sum above mentioned, with interest thereon from the year 1853. Suggestion being made that steps should now be taken in behalf of the United States to have the judgment annulled by a superior court: *Advised*, that this is unnecessary, for the reason that, as no officer of the United States had authority to institute or appear in said proceedings and submit its rights to adjudication, the Government cannot be bound by them, and that proceedings to oust the United States from the possession of the premises could not be maintained. *Opinion of Feb.* 6, 1880, 16 Op. 466.

SUPREME COURT.

1. The various provisions of statutes, more especially those of February 26, 1853, chap. 80, and August 16, 1856, chap. 124, regulating expenses of the courts of the United States, apply only to the circuit and district courts, and not to the Supreme Court. *Opinion of Dec.* 8, 1856, 8 Op. 219.

2. The certificate of the Chief-Justice of the United States, passing the contingent accounts of the Supreme Court, is not subject to revision by the accounting officers of the Treasury Department. *Ibid.*

3. The general statutes to regulate the public printing apply only to Congress and the executive Departments, and not the Supreme Court; all printing ordered by or for the latter being placed by statute under its own special authority. *Ibid.*

SURETY.

See also BOND; POSTAL SERVICE, III.

1. Where a purser in the Navy was reappointed under the provisions of the act of March 30, 1812, chap. 47: *Advised*, that a correct interpretation of the act required a new bond to be given in such case, although the sureties on the original bond of the purser may not be wholly discharged of responsibility since the reappointment. *Opinion of April* 14, 1814, 1 Op. 175.

2. It is a settled principle, both of law and of equity, that a surety can be no further bound than he has expressly bound himself by his own stipulation. *Opinion of March* 27, 1820, 1 Op. 339.

3. Sureties of collectors of taxes appointed under the act of the 22d July, 1813, chap. 16, are liable for their delinquencies, under the act of January 9, 1815, chap. 21, to the amount of the penalties of their bonds. *Ibid.*

4. A marshal may bring suit against a defaulting deputy whenever he becomes liable himself to the United States by reason of such default. *Opinion of May* 12, 1820, 1 Op. 363.

5. At common law the release of one obligor is the release of all the rest; and unless this effect is prevented by the provisions of the act of March 3, 1817, chap. 114 (which is doubtful), a discharge by the President, under that act, of an insolvent debtor from imprison-

ment, would also discharge his sureties from their liability. *Opinion of May* 20, 1820, 1 Op. 367.

6. Where the assignee of a Government contract to build a fortification executes a bond to the Government, with sureties, conditioned that he fulfill the original contract, he and his sureties are as much bound to the performance of the original contract as they would be in the case of a contract wholly original. *Opinion of Oct.* 17, 1820, 1 Op. 402.

7. The estate of a surety for a receiver of public moneys for lands is liable, after the death of such surety, for the faithful performance by the receiver of his duties until the end of his term; the surety having bound his heirs, executors, and administrators. *Opinion of Oct.* 30, 1822, 1 Op. 573.

8. The sureties of a collector of taxes, appointed by the President during a recess of the Senate, and confirmed by the Senate at its next session, who signed the bond given by the collector when he entered upon his official duties, are liable for the faithful performance of the duties of the collector throughout the term; the appointment during the recess and the subsequent nomination, and confirmation by the Senate, making but one and the same appointment. [But see, *contra*, par. 11 below.] *Ibid.*

9. The discharge of a principal debtor under the act of March 3, 1817, chap. 114, does not discharge the sureties of such debtor. *Opinion of Dec.* 7, 1822, 5 Op. 746.

10. Sureties to pursers in the Navy are not liable to have their compensation stopped on account of any balances found due the Government from their principal. *Opinion of June* 30, 1823, 1 Op. 617.

11. The subsequent nomination to, and confirmation by, the Senate of an appointee during a recess is not a continuation of the first commission, but is a new appointment, and requires a new bond for the performance of its duties. *Opinion of March* 24, 1824, 1 Op. 637.

12. Where an officer appointed by the President during a recess of the Senate falls in arrear with the Government during his first commission, but after his nomination to and confirmation by the Senate makes payments into the Treasury, yet continues in arrear for current dues to the Government, for which a suit is brought, it is competent for the jury to apply the payments in exoneration of the balances for which the sureties under the first commission were bound. *Ibid.*

13. Judgments upon duty bonds against a surety are valid, although the suits were protracted until the principal obligor and co-surety became insolvent. It is settled law that no laches can be imputed to the Government; and that no voluntary forbearance, either to institute or to press a suit against the principal, can discharge the sureties. *Opinion of March* 29, 1827, 2 Op. 51.

14. Liens extend to all the real estate of collectors and their sureties, owned by them at the time the sums in default were committed to them. *Opinion of Jan.* 1, 1830, 2 Op. 310.

15. The sureties of a marshal, whose official functions have ceased, are not liable for any defalcation, on his part, to pay the several assistants in taking the census the amount due to each out of the funds to be transmitted to him after their removal from office by the Department of State. *Opinion of March* 21, 1831, 2 Op. 416.

16. Sureties of a delinquent or defaulting principal obligor in a custom-house bond are not liable to detention of moneys due them; the phrase "who is in arrears to the United States," contained in the act of January 25, 1828, chap. 2, applying only to persons who, having previous transactions of a pecuniary nature with the Government, are found upon the settlement of those transactions to be in arrears. *Opinion of March* 21, 1836, 3 Op. 52.

17. The commission of an officer appointed during a recess, who is afterwards nominated and rejected, is not thereby determined, nor his sureties released from liability on account of any subsequent breach of his official bond. *Opinion of May* 20, 1842, 4 Op. 30.

18. The sureties of a purser owing a balance exceeding $1,000, and ordered to sea or other service, are not thereby discharged; but, for abundant caution, their consent should be previously obtained. *Opinion of Nov.* 22, 1842, 4 Op. 119.

19. The sureties to a contract made by an infant with the Government are clearly bound for his faithful performance of the contract; for, though the infant may excuse himself on the ground of his non-age, the privilege is per-

sonal to himself, and cannot be made available as a defense by them. *Opinion of Sept.* 4, 1844, 4 Op. 334.

20. The sureties of a receiver of public moneys, appointed during a recess of the Senate. are liable for all moneys received by him up to the end of the succeeding session of the Senate, in cases where the receiver shall not have previously given a new bond as required by law of officers nominated to and confirmed by the Senate whilst holding under a temporary appointment. *Opinion of Jan.* 25, 1851, 5 Op. 292.

21. The sureties of a receiver of public moneys (who shall have been acting under a temporary appointment), appointed by and with the advice of the Senate, are liable for all moneys in his hands on the day of the giving of their bond, and which he may subsequently receive, to the extent of its penalty. *Ibid.*

22. If there be an interregnum in the security for the performance of the duties of the office of the receiver of public moneys, appointed during a recess, and subsequently nominated to and confirmed by the Senate, by reason of his neglect to give a new bond upon his second appointment until after the adjournment of the Senate, neither the sureties in the first nor second bond are liable for the moneys by him received during that period. *Ibid.*

23. After return of execution on *scire facias* against the surety of an absconding criminal, charged with violation of acts of Congress, the only mode of relieving the surety is by exercise of the pardoning power of the President. *Opinion of April* 3, 1854, 6 Op. 408.

24. The sureties of a mail contractor are responsible to the Government for the whole term of the contract, and as well after the death of their principal as before. *Opinion of April* 5, 1854, 6 Op. 410.

25. The President has no authority to release the sureties on a bond given to the United States by a marshal for a faithful discharge of the duties of his office. *Opinion of March* 12, 1855, 7 Op. 62.

26. The sureties of a public officer are not liable to the United States for moneys improvidently advanced to such party by the Government after he shall have ceased to hold office. *Opinion of July* 10, 1856, 8 Op. 7.

27. The sureties of the marshal of Utah need not be residents of the Territory. *Opinion of June* 9, 1860, 9 Op. 429.

28. The President has no duty to perform in respect to an application by the sureties in a bond given to the United States under the Guano Island act of August 18, 1856, chap. 164, to be released from their obligation in consequence of a breach of the bond by their principal. *Opinion of March* 23, 1864, 11 Op. 30.

29. The sureties on the bond of a navy agent are liable only for his acts during the continuance of his commission. *Opinion of July* 11, 1865, 11 Op. 286.

SURPLUS FUND.

See also APPROPRIATIONS, III.

1. Under the acts of March 3, 1795, chap. 45, May 1, 1820, chap. 52, and August 31, 1852, chap. 108, in general, a balance of appropriation remaining unexpended at the expiration of two years is carried to the "surplus fund," and can be withdrawn therefrom only by new appropriation, except in the case of appropriations for objects to which a duration longer than two years is assigned by law; as to which, and especially expenditures in the War and Navy Departments, the specific appropriations remain in charge of the latter, until, on report therefrom of the object being consummated, the money is credited to the "surplus fund" at the Treasury Department. *Opinion of Oct.* 9, 1854, 7 Op. 1.

2. In general, an appropriation or a balance thereof, made in any year for any continuous contract or other service of the Government, may be applied to the same service during the succeeding or any subsequent year, and does not lapse into the "surplus fund" until the particular object be consummated. *Ibid.*

SUSPENSION.

See OFFICE, IX.

SUTLER.

See also POST TRADER.

Army sutlers are not subject to a license in the State of California on sales made by them

to officers or soldiers of the Army, nor to tax on goods kept by them at a military post for that purpose; but sutlers may be compelled to pay license if they enter into general trade within the State. *Opinion of Oct.* 27, 1855, 7 Op. 578.

SWAMP LANDS.

See PUBLIC LANDS, XV, XVII, XVIII.

TAXES.

See also DIRECT TAX; STATE TAXES.

1. The words "within two years *from* the time of sale" used in the second *proviso* of section 22 of the act of July 22, 1813, chap. 16, giving the owners of lands, sold for direct taxes, the right to redeem them of the purchasers at the tax sales, exclude the day of sale from the computation. *Opinion of May* 13, 1820, 1 Op. 364.

2. A tax for grading streets, assessed on land *in transitu* from the State of New York, and from individuals therein, to the United States: *Held*, to have so much of possible right as to render it advisable for the United States not to contend. *Opinion of Jan.* 28, 1854, 6 Op. 265.

3. The persons in the employment of the United States, actually residing in the limits of the armory at Harper's Ferry, do not possess the civil and political rights, nor are they subject to the tax and other obligations of citizens of the State of Virginia. *Opinion of June* 24, 1854, 6 Op. 577.

4. A city has no power to tax United States property within her limits. *Opinion of March* 16, 1859, 9 Op. 291.

TELEGRAPH.

1. Consideration of the legal effect of certain provisions of a bill (the act of March 3, 1857, chap. 95) entitled "An act to expedite telegraphic communication for the uses of the Government." *Opinion of March* 3, 1857, 8 Op. 512.

2. The legislation of Congress on the subject of interoceanic telegraph communication declares it to be a subject-matter of national concern and commercial intercourse. *Opinion of Dec.* 30, 1867, 12 Op. 337.

3. An oceanic-telegraph cable, which has its terminus upon the territory of the United States, comes within the regulating power of Congress. *Ibid.*

4. It is doubtful whether Congress has power over the subject-matter of intercourse by telegraph strictly within the limits of a State, or extending through two or more States, having its termini within the territory of the United States. *Ibid.*

5. It seems that Congress has not the power to regulate the charges upon a railroad; and for the same reason it cannot have that power over telegraphic communication within the limits of the United States. *Ibid.*

6. As to foreign commerce a State has no regulating power, as it is altogether and exclusively a matter of Federal legislation, and the telegraph, when used as a vehicle of intercourse with foreign nations, has been claimed by Congress to be within the power to regulate commerce. *Ibid.*

7. Congress may prescribe the rules upon which oceanic telegraphs, connecting the United States with foreign countries, shall be operated, and fix for them a tariff of charges. *Ibid.*

8. The act of March 29, 1867, chap. 15, conferring certain rights and privileges upon the American Atlantic Cable Telegraph Company, does not preclude Congress from at any time conferring similar rights and privileges upon any other company. *Opinion of July* 22, 1872, 14 Op. 63.

9. The establishment of telegraphic lines connecting the United States with other countries properly falls under the regulative power of Congress; but that body has as yet made no general regulations on the subject. *Ibid.*

10. The act of July 24, 1866, chap. 230, was intended to apply to interior lines of telegraph—that is to say, those established between points within the United States—and not to exterior oceanic lines designed for communication with foreign lands. *Ibid.*

11. Section 2 of the act of July 24, 1866, chap. 230, requires all telegraph companies which have accepted the rights and privileges conferred by that act, together with the restrictions and obligations thereby imposed, to give priority to messages from officers and

ts of the United States to the several de-
nents, and to transmit them at the rates
by the Postmaster-General, whether the
ages are received from such officers and
ts directly, or through other connecting
raph lines. *Opinion of Oct.* 2, 1872, 14
123.

. The papers submitted disclosing the
hat the line of telegraph operated by the
ern Union Telegraph Company along the
of the Union Pacific Railroad and of the
ral Pacific Railroad, from Omaha to San
cisco, is a different line from that origi-
built and equipped between the same
ini by the Union Pacific Railroad Com-
and the Central Pacific Railroad Com-
, under the act of July 1, 1862, chap.
Held, that the line operated by the West-
Jnion Telegraph Company is not subject
e provisions of that act and of its supple-
s, requiring one-half the compensation
ervices rendered the Government over the
raph lines established thereunder to be
ed to the payment of the bonds issued by
Jnited States in aid of the construction
of, and that no portion of the compensa-
allowable for the transmission of Govern-
dispatches over the said line can be re-
d for payment of the bonds mentioned.
ion of Jan. 16, 1873, 14 Op. 173.

. Respecting the telegraph line operated
he Western Union Telegraph Company
the route of the Kansas Pacific Railroad,
Attorney-General declines to express an
on without more specific information.

. Telegraph messages between district at-
ys and marshals, on official business, are
led to be transmitted over telegraphic lines
ıting under the provisions of the act of
24, 1866, chap. 230, at the rates fixed by
ostmaster-General pursuant to the second
on of that act. *Opinion of July* 10, 1873, 14
278.

. The word "between," as used in that
on, is to be taken distributively, as ap-
ıg to official communications between one
rtment of the Government and another,
een a department and its officers and
ts or the officers and agents of another de-
nent, between officers and agents of the
department, and, finally, between officers
and agents of one department and those of another. *Ibid.*

16. The only limitation applicable is, that the telegraphing must be in cases where the rates are payable out of public moneys, or are to be accounted for to the Government by the officer making the expenditure. *Ibid.*

17. Statutory provisions relating to the establishment of the telegraph line along the route of the Kansas Pacific Railroad and the payment of compensation for the transmission of dispatches over the same, reviewed. *Opinion of Oct.* 13, 1873, 14 Op. 314.

18. One-half of the compensation chargeable for sending such dispatches over that line should be retained and applied to the payment of the bonds issued by the United States in aid of said railroad, notwithstanding that at the time the dispatches were sent the line was actually managed and operated, not by the Kansas Pacific Railroad Company, but by the Western Union Telegraph Company, and the service was rendered directly to the Government by this company. *Ibid.*

19. A company chartered by the State of Oregon, subsequently to the act of July 24, 1866, chap. 230, constructed a telegraph line over public domain of the United States, within that State, but never filed a "written acceptance," as required by that act, and declines to comply with the provisions of that act as to rates for Government telegrams: *Advised*, that the company, in respect of the erection of its telegraph on the public lands, is a trespasser, and that the United States (without special legislation) are entitled to all ordinary remedies for trespass given at law, as well as to all extraordinary remedies given in equity. *Opinion of March* 29, 1876, 15 Op. 554.

20. In transmitting Government dispatches from Leavenworth, Kansas, to points in Colorado, the Western Union Telegraph Company has not the option to send them either by way of Denver (over the telegraph line constructed along the Kansas Pacific Railroad) or by way of Pueblo (over the telegraph line constructed along the Atchison, Topeka and Santa Fé Railroad). *Opinion of July* 28, 1876, 15 Op. 579.

21. The option of selecting the route is with the Government; and where no option is expressed thereby, the company is bound to send the dispatch over the cheaper route. *Ibid.*

22. The acceptance by the said company of the rates established by the Postmaster-General under the act of July 24, 1866, chap. 230, was not a waiver of the right of the company to change its local tariff rates over the telegraph line constructed along the Kansas Pacific Railroad between Lawrence and Denver. *Ibid.*

TERRITORIES.

1. The appointing power in the Northwestern Territory is expressly given to the governor in cases in which it is not otherwise directed; and positive provisions are not abridged by implication. *Opinion of Feb.* 2, 1802, 1 Op. 103.

2. It has been the practice of the President to appoint three judges provided for in the ordinance, having common law jurisdiction, from an implied power; yet, as the implication does not extend beyond the three, the governor is justified in his appointment of all other judges and officers. *Ibid.*

3. The officers of the Territory of Michigan are clothed with the same powers as those of the Territory of Indiana. The term "officers" includes the governor, judges, and secretary. *Opinion of March* 18, 1806, 5 Op. 696.

4. Brigadier-generals of militia of a Territory may be appointed by the President. *Opinion of April* 12, 1810, 1 Op. 165.

5. The salaries of the governor and judges of Arkansas Territory, appointed under the act of March 2, 1819, chap. 49, can only commence from the 4th of July, 1819, although their commissions bear date prior thereto, as the Territory was not constituted till then. *Opinion of Sept.* 28, 1819, 1 Op. 310.

6. The act of 3d March, 1823, chap. 36, was a permanent and general amendment of the pre-existing judiciary system of the Territory of Michigan, affecting not only the judges then in office, but all who should thereafter come into office in that Territory. *Opinion of Sept.* 21, 1824, 1 Op. 696.

7. The powers of all the departments of the regularly organized Territorial governments are derived from the acts of Congress making rules for such governments, and can be exercised only in the manner and within the limits prescribed by their provisions; wherefore, Territorial legislatures cannot, without permission from Congress, pass laws authorizing the formation of constitutions and State governments. *Opinion of Sept.* 21, 1835, 2 Op. 727.

8. And all measures commenced and prosecuted with a design to subvert the Territorial government, and to establish and put in force in its place a new government without the consent of Congress, will be unlawful. *Ibid.*

9. But the people of any Territory may peaceably meet in primary assemblies, or in conventions chosen by such assemblies, for the purpose of petitioning Congress to abrogate the Territorial government, and to admit them into the Union as an independent State; and if they accompany their petition with a constitution framed and agreed on by their primary assemblies, or by a convention of delegates chosen by such assemblies, there is no objection to their power to do so, nor to any measures which may be taken to collect the sense of the people in respect to it; provided such measures shall be prosecuted in a peaceable manner, in subordination to the existing government, and in subserviency to the power of Congress to adopt, reject, or disregard them, at their pleasure. *Ibid.*

10. Territorial judges, not being constitutional but legislative officers only, and not civil officers within the meaning of the Constitution, are not subject to impeachment and trial before the Senate of the United States. *Opinion of Feb.* 1, 1839, 3 Op. 409.

11. By the act of the 14th of August, 1848, chap. 177, establishing a Territorial government in Oregon, the legislative power and authority were vested in a legislative assembly, consisting of a council and house of representatives; and the concurrence in, and approval of, the acts of that body by the governor was not made necessary. *Opinion of April* 23, 1851, 5 Op. 359.

12. That act conferred authority upon the legislative assembly to locate the seat of government for the Territory. *Ibid.*

13. By the act of the 11th of June, 1850, chap. 19, making appropriations for public buildings in that Territory, the governor was invested with a concurrent and equal authority with the legislative assembly in the application of the money. *Ibid.*

14. Any law enacted by the legislative assembly of Oregon, which embraces more than one subject, is in violation of the act estab-

lishing that Territory, and is null and void. *Ibid.*

15. The Territorial legislature of Oregon passed a law in February, 1851, removing the seat of government from Oregon City to Salem. This, by the organic act, they had power to do. But the law was deemed invalid for another reason, namely, because of multiplicity of contents: *Held*, that the remedy is with Congress. *Opinion of March* 22, 1852, 5 Op. 525.

16. The act of the legislature of the Territory of New Mexico, appointing semi-annual terms of the district courts, is valid; it being clearly consistent with that provision of the organic act (sections 10 and 16 of the act of Sept. 9, 1850, chap 49) authorizing courts to be held at such "time and place" as may be prescribed. *Opinion of April* 12, 1852, 5 Op. 528.

17. Territorial judges, absent from the Territory for a period of three months, can obtain their salaries only on certificate of the President that the absence was for good cause, such being the provision of the act of June 15, 1852, chap. 49. *Opinion of June* 18, 1853, 6 Op. 57.

18. A Territorial court can not appoint an attorney for the Territory, but may designate a person to perform in court any duty of such attorney in his absence, which person will have a right to compensation from the United States. *Opinion of Aug.* 13, 1853, 6 Op. 80.

19. The governor of the Territory of Utah has power to reprieve, but not to pardon, persons indicted and convicted of crime against the United States. *Opinion of April* 14, 1854, 6 Op. 430.

20. The salaries of all judges of courts of the United States are due from the date of appointment, but the party does not become entitled to draw pay until he has entered on the duties of his office, or at least taken his official oath; for, until then, though under commission, he is not actually in office; and in some cases, as that of the Territorial judges of Oregon, Washington, Kansas, and Nebraska, salary, though due from date of appointment, can not be drawn until the judge enters on duty in the Territory. *Opinion of June* 30, 1855, 7 Op. 304.

21. The United States cannot take private land for the construction of a road in one of the Territories, without some legal form of expropriation either by act of Congress or of the Territory. *Opinion of July* 7, 1855, 7 Op. 320.

22. The United States never held any municipal sovereignty, jurisdiction, or right of soil in the territory of which any of the new States are formed, except for temporary purposes, namely, to execute the trusts created by deeds of cession of Virginia, Massachusetts, Georgia, and other States in the original common territory of the Union, or by the treaties with France, Spain, and the Mexican Republic, in the territory embracing Louisiana, Florida, New Mexico, and California. *Opinion of Oct.* 24, 1855, 7 Op. 571.

23. The provisions of the ordinance for the organization of the Northwest Territory were extinguished by the Constitution, or, if any of them retain continuing validity, it is only so far as they may have authority derived from some other source—either the compact of cession, or acts of Congress under the Constitution. *Ibid.*

24. This doctrine has been applied in leading cases to questions touching the property in public lands, the relation of master and slave, religion, and navigable waters, and the eminent domain, and may be taken as the established legal truth. *Ibid.*

25. In obedience to the same principle, and proceeding in the same line of adjudication, it must have been held, if the question had come up for judicial determination, that the provision of the act of March 6, 1820, chap. 22, which undertakes to determine in advance a perpetual rule of municipal law for all that portion of the province of Louisiana which lies north of the parallel of thirty-six degrees and thirty minutes north latitude, was null and void *ab incepto*, because incompatible with the organic fact of equality of internal right in all respects between the old and the new States. *Ibid.*

26. The same doctrine controls the question of the relative rights of the United States and of any one of the new States, in regard to lands occupied by the United States for public purposes in such State. *Ibid.*

27. The judges, district attorneys, and marshals of the Territories are not required by law to have their residences at any particular places in their respective Territories. *Opinion of May* 2, 1857, 9 Op. 23.

28. Under the act of May 30, 1854, chap. 59, organizing the Territorial government of Kansas, the governor had three clear days to

consider a bill passed by the Territorial legislature; and if he failed to return it, such bill did not become a law unless the assembly was in session three days after the day on which the bill was passed. *Opinion of March* 10, 1858, 9 Op. 132.

29. After the passage of the act of March 3, 1855, chap. 167, appropriating $25,000 for public buildings in the Territory of Kansas, and the act of the Territorial legislature passed in pursuance thereof fixing the permanent seat of government at Lecompton, the Territorial legislature had no right to remove the seat of government from that town. *Opinion of Nov.* 20, 1858, 9 Op. 271.

30. Under the act of May 30, 1854, chap. 59, organizing the Territories of Nebraska and Kansas, two-thirds of a quorum of the Territorial legislature constitute the majority necessary to pass a bill which the governor has vetoed. *Opinion of Jan.* 31, 1860, 9 Op. 410.

31. The legislature of Colorado Territory, under the organic act (the act of February 28, 1861, chap. 59), had authority to increase the number of the members of the House of Representatives, and the thirteen persons elected in December, 1861, under the Territorial law, are as lawfully members of the house of representatives of the Territory as those elected under the organic act in August of the same year. *Opinion of July* 9, 1862, 10 Op. 312.

32. Under the organic act of the Territory of Utah (act of September 9, 1850, chap. 51) the Territorial legislature has power to prescribe the mode of electing or appointing judges of probate in that Territory. *Opinion of Aug.* 16, 1870, 13 Op. 311.

33. By force of the provisions of the act of March 3, 1869, chap. 121, prescribing the terms of members of Territorial legislatures, and regulating the sessions of such legislatures, the election of members of the legislature of Dakota Territory, held in October, 1870, was invalid. *Opinion of Nov.* 17, 1870, 13 Op. 343.

34. The legislature of that Territory, chosen in October, 1869, is the lawful legislature for the space of two years from the commencement of its term. *Ibid.*

35. The special session of the legislature of Dakota, called by the acting governor of the Territory to meet April 18, 1871—a regular session having met in the latter part of the year 1870—*held* to be unauthorized by law; the act of March 3, 1869, chap. 121, providing that the sessions shall be biennial, and containing no exception for the case of a special session. *Opinion of April* 15, 1871, 13 Op. 408.

36. Where two bodies claimed to be the house of representatives of the Territory of New Mexico, and the secretary of the Territory desired instructions as to which of these bodies he should pay: *Advised* that, in view of the imperfect statement of facts furnished, nothing be done which might be regarded as a recognition of the legality of either of the bodies referred to, and that the secretary be informed that no instructions such as he desires can be given without more complete information. *Opinion of Jan.* 31, 1872, 14 Op. 4.

37. As a rule, the governor of a Territory can remove only such officers as have been duly appointed by him to hold at pleasure. *Opinion of July* 24, 1874, 14 Op. 422.

38. He has no power to remove officers appointed during pleasure by others than himself, or officers whose tenure is for a stated term or for good behavior, unless so authorized by the organic law or (in some cases) by the Territorial law. *Ibid.*

39. Accordingly, where certain officers created by a Territorial statute were appointed by the governor, with the consent of the council of the Territory, for the term of two years: *Held*, that, in the absence of a power of removal expressly conferred by law upon the governor, those officers are not removable by him. *Ibid.*

40. Under an act of the legislature of Montana Territory of February 11, 1874, providing for the submission to the qualified voters there of the question as to a change of the Territorial seat of government from Virginia City to Helena, an election was held on the 3d of August following, the returns of which, according to the official canvass of the votes (which was required to be made by the secretary and marshal of the Territory, in the presence of the governor), showed a majority against the change. Application having subsequently been made for a recanvass of the votes: *Held*, that, whether the secretary and marshal *together* might or might not, under the particular circumstance of the case, recanvass the votes (on which no opinion is expressed), a recanvass made by one of those officers alone, as was proposed, would not

satisfy the requirements of the act mentioned; yet, *held further*, that the legal questions involved—either as regards the discharge of the duties of the canvassing officers, the validity of the canvass of the votes as made and certified by them, or the final ascertainment of the fact whether a majority of the votes cast was in favor of or against the removal of the capital—are of purely local concern, in which the General Government is not interested, and over which its Departments have no jurisdiction or control. *Opinion of Oct.* 8, 1874, 14 Op. 462.

41. Such questions may, by appropriate proceedings, be brought before the courts of the Territory, to which their determination rightfully belongs. *Ibid.*

42. Corporations formed under a general law of the Territory of Montana, dated December 13, 1867, for the purpose of constructing and maintaining bridges, roads, or ferries, come within the scope of the provision in the first section of the act of March 2, 1867, chap. 150, authorizing the Territorial legislatures, by general incorporation acts, to permit persons to associate themselves together as bodies corporate for "industrial pursuits." *Opinion of Aug.* 2, 1878, 16 Op. 114.

43. In granting to such corporations the privilege of locating their bridges, roads, &c., upon the public lands of the United States, the Territory must be deemed to have acted within the limits of the authority thus given by Congress. *Ibid.*

44. Where the bridges, roads, &c., so located are used by the Government for the passage of troops, animals, and supplies, the owners thereof are entitled to a reasonable compensation for such use. The compensation is not necessarily to be the tolls fixed by the owners or the local authorities. *Ibid.*

45. The legislature of Wyoming Territory has no power to direct that persons convicted of violations of the laws thereof shall be imprisoned at any place outside of the boundaries of that Territory. *Opinion of May* 13, 1880, 16 Op. 678.

TEXAS BONDS.

On the act of September 9, 1850, chap. 49, which directed the delivery by the United States of $10,000,000 in stock to the State of Texas, provided that no more than five millions of said stock be issued until certain creditors of the State should have filed in the Treasury releases of all claims against the United States: *Held*, that the Secretary of the Treasury cannot make delivery of the reserved five millions by apportionment, but must withhold all payments until evidence be presented to him of the complete discharge of the United States in the premises. *Opinion of Sept.* 25, 1853, 6 Op. 130.

TEXAS COLONIZATION GRANTS.

Consideration of the constitutional force and effect of certain constitutional and legislative acts of the State of Texas, in relation to colonization land grants made by the Republic of Texas. *Opinion of Oct.* 1, 1855, 8 Op. 522.

TIME.

1. It is the universal rule in the computation of time for legal purposes not to notice fractions of a day. *Opinion of March* 10, 1858, 9 Op. 132.

2. When the law allows a thing to be done within a certain number of days, the modern rule in England is to exclude the first day from the calculation. *Ibid.*

3. The American courts have in innumerable cases applied the general principle that where time is to be computed from an act done the day on which the act is done shall be excluded, unless it is apparent that a different computation was intended. *Ibid.*

4. Though divisions of a day may be allowed sometimes to make priorities or give other advantages in private transactions, they are always excluded in public proceedings. *Ibid.*

TITLE.

1. A right by mere possession to vacant lands can never exist against the Government. *Opinion of March* 26, 1802, 1 Op. 108.

2. The Attorney-General, in certifying the title of land purchased by the Government, must look at the question as one of pure law,

and cannot relax the rules of law on account either of the desirableness of the object or the smallness of the value of the land. *Opinion of April* 27, 1854, 6 Op. 432.

3. The banks and shores of navigable waters, whether sea, lake, or river, in any of the States, belong either to the State or to individuals, as the case may be, and not to the United States. *Opinion of July* 3, 1855, 7 Op. 314.

4. When by act of Congress a pier or breakwater is constructed for the improvement of a harbor, no right to the land on which it is constructed accrues to the United States by that fact alone, and without purchase and cession from the States. *Ibid.*

5. If, in consequence of any such construction, land is made by accretion, such accretion belongs to the owner of the land to which it attaches, and not to the United States. *Ibid.*

6. Suggestions as to the validity of the title of the United States to the Indian reservation of the Tejon in California. *Opinion of July* 3, 1856, 7 Op. 744.

7. Exposition of the duty of the Attorney-General in examining and certifying the title to lands purchased by the United States. *Opinion of Feb.* 24, 1857, 8 Op. 405.

TONNAGE.

See COMMERCE AND NAVIGATION, III; CUSTOMS LAWS, XIII.

TRADE-MARK.

1. State legislation on the subject of trade-marks noticed. *Opinion of Sept.* 13, 1865, 11 Op. 352.

2. The provisions of the act of July 8, 1870, chap. 230 (embodied in section 4937 Rev. Stat.), in regard to trade-marks, having been declared unconstitutional by the United States Supreme Court, it is no longer the duty of the officer charged therewith to execute them. Accordingly, it is recommended that the practice of registering trade-marks at the Patent Office (which was allowed to be done by parties desiring it since the ruling of the Supreme Court above referred to) be discontinued. *Opinion of Dec.* 10, 1880, 16 Op. 586.

TRANSPORTATION.

See also CONTRACT; POSTAL SERVICE.

1. In March, 1877, the Northern Pacific Railroad Company entered into a contract with the Quartermaster's Department to transport army supplies, at a stated rate per hundred pounds, between certain points in the State of Minnesota, in performing which the company was obliged to transport the stores part of the way over a land-grant railroad. In the contract was a stipulation that no deduction should be made from the rate stated "on account of land grants." *Held*, that the contract is within the act of March 3, 1875, chap. 133, and that the accounting officers of the Treasury have no authority to audit and settle a claim for transportation thereunder, but such claim is required to be settled by suit in the Court of Claims. *Opinion of June* 28, 1878, 16 Op. 607.

2. The prohibition in the act of 1875 is not limited to payments to the company owning the land-grant road over which the transportation was performed. It extends to payments made to any railroad company for transportation over any land-grant road of the sort specified, whether its own or another's. *Ibid.*

3. The act of 1875 does not take away the authority of the accounting officers of the Treasury to audit and settle accounts for transportation arising under *bona fide* contracts made with common carriers other than railroad companies, in cases where such transportation has been partly performed over land-grant roads. *Ibid.*

4. The Union Pacific Railroad Company cannot require that flour, in order to be transported over its road for the United States, shall be packed in barrels, and refuse to transport it if packed in sacks. *Opinion of Dec.* 3, 1880, 16 Op. 581.

5. Whether the Kansas Pacific Railway Company can decline to transport over its road, for the United States, flour in sacks at ordinary freight rates, or require the same to be transported at the owner's risk when the Government pays only the lowest rate therefor, considered. *Ibid.*

TRAVELING ALLOWANCES.

See also MILEAGE.

1. Case of allowance to a commissioner, for running the boundary line between the United States and the Mexican Republic, of expenses of his return to the place of his domicil at the time of appointment. *Opinion of Feb* 9, 1856, 7 Op. 627.

2. Where a naval officer traveled under orders from New York to San Francisco via the Isthmus of Panama in the years 1859 and 1860 (before the opening of the overland route): *Held*, that, under the second section of the act of March 3, 1835, chap. 27, he was entitled to an allowance of 10 cents per mile for traveling expenses. *Opinion of May* 3, 1872, 14 Op. 590.

3. By section 7 of the act of March 2, 1867, chap. 170, provision is made for additional traveling allowances in favor of "such California and Nevada volunteers as were discharged in New Mexico, Arizona, or Utah, and at points distant from the place or places of enlistment"; and all who fall within that description are authorized to be paid, under the regulations of the Secretary of War, according to the distance traveled by each in returning from the place of discharge to the place of enlistment. *Opinion of May* 8, 1872, 14 Op. 40

4. The *proviso* in the appropriation act of June 16, 1874, chap. 285, declaring "that only *actual traveling expenses* shall be allowed to any person holding employment or appointment under the United States," applies to United States marshals, and, therefore, supersedes the provision in the fee-bill (Rev. Stat., sec. 829) allowing mileage to those officers. *Opinion of Aug.* 29, 1874, 14 Op. 681.

5. The provision in the act of June 16, 1874, chap. 285, as to the allowance of "actual traveling expenses," supersedes the provision in the fee-bill (Rev. Stat., sec. 829) allowing mileage to marshals on account of each necessary guard employed in transporting prisoners, &c., the same as on any other account whatever. *Opinion of Sept.* 30, 1874, 14 Op. 684.

6. In the case of a guard so employed, his compensation, actually and necessarily paid, constitutes, as well as his traveling expenses, a part of the actual traveling expenses of the marshal, within the meaning of the law. *Ibid.*

7. Under section 24, act of July 15, 1870, chap. 294, Army officers traveling abroad upon public business (their transportation not being furnished by the Quartermaster's Department, or on a conveyance belonging to or chartered by the United States) were entitled to mileage at the rate of 10 cents per mile for sea travel as well as for land travel. *Opinion of July* 6, 1875, 15 Op. 496.

8. The rule which forbids mileage for sea travel to naval officers under the second section of the act of March 3, 1835, chap. 27, does not apply to or govern questions of mileage to Army officers under the act of 1870. *Ibid.*

9. Special agents employed by the Postmaster-General under section 4017, Rev. Stat., are entitled to an allowance for traveling and incidental expenses, within the limit there prescribed, only while they are actually employed in the service. *Opinion of March* 10, 1876, 15 Op. 75.

10. The provision in section 4017 Rev. Stat., for traveling and incidental expenses of special agents of the Post-Office Department, while it limits the allowance to each agent "to a sum not exceeding $5 a day," does not entitle the agent to have that amount allowed him where he has agreed with the Department to take a less sum per day for such expenses. *Opinion of March* 20, 1876, 15 Op. 82.

11. Under the act of February 22, 1875, chap. 95, only *one* charge for mileage is allowable for the service of several writs in hand at the same time, requiring the marshal to travel to the same place or in the same direction. (*Contra*, see opinion of Oct. 10, 1878, 16 Op. 165.) *Opinion of May* 29, 1876, 15 Op. 108.

12. Under the act of June 30, 1876, chap. 159, mileage is allowable to officers of the Navy only when traveling on public business within the United States. For travel without the United States their actual expenses alone can be allowed: *Held*, accordingly, that where a naval officer was ordered home from Hong-Kong, and furnished with a through ticket (such ticket being assumed to have covered his actual expenses) he is not entitled to the difference between the cost of that ticket and the mileage established by that act. *Opinion of June* 13, 1877, 15 Op. 309.

13. The members of the Mississippi River Commission (created by the act of June 28, 1879, chap. 43) who are appointed from the Engineer Corps of the Army are entitled to mileage, at the rate of 8 cents per mile, for all

travel required of them by that commission pertinent to the objects for which it was constituted. Travel so required is travel under orders, within the meaning of section 2 of the act of July 24, 1876, chap. 226. *Opinion of Aug.* 25, 1880, 16 Op. 559.

14. Such mileage should be paid out of the appropriation made in said act of June 28, 1879, for "necessary expenses." *Ibid.*

TREASURY.

The Treasury of the United States has no locality, and credits upon it are not *bona notabilia* confined to the District of Columbia. *Opinion of July* 17, 1854, 6 Op. 557.

TREASURY DEPARTMENT.

See also EXECUTIVE DEPARTMENTS; SECRETARY OF THE TREASURY.

1. By the Treasury regulations, transfer of public stocks held by foreign decedents may be made on satisfactory proof that the party claiming the right in such stocks is entitled as devisee, distributee, or otherwise according to law. *Opinion of May* 31, 1855, 7 Op. 240.

2. The doctrine of the right of neutrals to purchase the ships of belligerents (see opinion of Aug. 7, 1854, 6 Op. 638) reaffirmed. The Secretary of the Treasury may regulate in such case the authentication of the bill of sale, which is the highest evidence of the change of property. *Opinion of Oct.* 8, 1855, 7 Op. 538.

TREASURY NOTES.

1. Under the act of March 3, 1843, chap. 81, authorizing the reissue of Treasury notes, and for other purposes, whenever outstanding Treasury notes, issued in pursuance of the act of August 31, 1842, chap. 289, or any previous act of Congress, shall be redeemed before July 1, 1844, other notes may be issued in the place of those redeemed; but the notes outstanding of an earlier issue than 1840 are governed by the law *then* in force, except so far as the act of 1843 authorizes their reissue if redeemed. *Opinion of April* 3, 1843, 4 Op. 172.

2. Where a Treasury note was stolen after its maturity from its lawful holder, and was subsequently purchased by a party for a valuable consideration in the usual course of business and without notice of the felony, it was *held* that the purchaser was entitled to payment of the note. *Opinion of Feb.* 13, 1860, 9 Op. 413.

TREATIES.

See also CLAIMS, III, IV; EXTRADITION.

I. *Generally.*
II. *With Indian Tribes.*
III. *With Foreign Nations.*

I. Generally.

1. A treaty, constitutionally concluded and ratified, abrogates whatever law of any one of the States may be inconsistent therewith. *Opinion of Feb.* 16, 1854, 6 Op. 291.

2. *Semble* that a treaty, assuming it to be made conformably to the Constitution in substance and form, has the effect, under the general doctrine that "*leges posteriores priores contrarias abrogant*," of repealing all pre-existing Federal law in conflict with it, whether unwritten, as law of nations or admiralty, or written, as legislative statutes. *Ibid.*

3. At any rate, if the effect of a treaty on existing statutes admit of doubt, Congress never has failed to pass the acts requisite to give effect to any treaty not containing provisions incompatible with the Constitution. *Ibid.*

4. Such provisions of the proposed convention between the United States and Great Britain, on the subject of copyright, as are inconsistent with existing provisions of acts of Congress, either abrogate the latter, or, if not, on the ratification of the convention they will probably be repealed by Congress. *Ibid.*

5. Not to observe a treaty is to violate a deliberate and express engagement. To violate such engagements of a treaty with any foreign power affords, of course, good cause of war. When Congress takes upon itself to disregard the provisions of any foreign treaty it, of course, infringes the same, in the exercise of sovereign right, and voluntarily accepts the *casus belli*,

as when, in 1798 (see act of July 7, 1798, chap. 67), it annulled the treaties between the United States and France. *Opinion of Aug.* 12, 1854, 6 Op. 658.

6. There is distinction, undoubtedly, between a treaty with a foreign power and a treaty with Indians who are subjects of the United States. Examples may be cited of acts of Congress which operate so as to modify or amend treaties with Indians. As their sovereign and their guardian we have occasionally assumed to do this, acting in their interest and our own, and not, in such cases, violating engagements with them, but seeking to give a more beneficial effect to such engagements. For though they be weak and we strong, they subjects and we masters, yet they are not the less entitled to the exercise towards them of the most scrupulous good faith on the part of the United States. *Ibid.*

7. Under the Constitution, treaties as well as statutes are the law of the land; both the one and the other, when not inconsistent with the Constitution, standing upon the same level and being of equal force and validity; and, as in the case of all laws emanating from an equal authority, the earlier in date yields to the later. *Opinion of Dec.* 15, 1870, 13 Op. 354.

II. With Indian Tribes.

8. The twelfth section of the act of May 19, 1796, chap. 30, prohibited every person, *not employed under the authority of the United States*, from negotiating, directly or indirectly, a treaty with any Indian tribe, &c.: *Held* that the expression "under the authority of the United States" meant the constitutional authority of the United States, which it was considered could not be bestowed on any person but by the President, with the advice of the Senate. *Opinion of May* 26, 1796, 1 Op. 65.

9. The Seneca Indians must be protected in the enjoyment of exclusive possession of their lands as defined and bounded in the treaty of Canandaigua, until they have voluntarily relinquished it. *Opinion of April* 26, 1821, 1 Op. 465.

10. So long as they remain in possession of the lands defined in the treaty, neither the Government of the United States nor individuals can lawfully enter upon them but by consent freely rendered on a full understanding of the case. *Ibid.*

11. By the first treaty between the United States and the Cherokee Indians (concluded at Hopewell, November 28, 1785), the lands they occupied were allotted to them for hunting-grounds, without conferring any permanent interest in the soil; and the fee remained in the State within whose jurisdictional limits the land was. *Opinion of March* 10, 1830, 2 Op. 322.

12. All the rights which the United States acquired under the treaties of 1817 and 1828 with the Cherokees inured to the benefit of the State of Georgia; for the United States were bound by the articles of cession between the United States and Georgia, of April, 1802, to extinguish the Indian title for "the use of Georgia." *Ibid.*

13. The fourteenth article of the treaty of 1830 with the Choctaws provides for those who desire to remain and become citizens of the United States, and their title is made to depend upon a residence of five years on the land with the intention of becoming citizens. *Opinion of Sept.* 9, 1831, 2 Op. 462.

14. The nineteenth article of said treaty provides absolutely for those who may not desire to remain and become citizens of the United States. *Ibid.*

15. The President has the power to approve the sale of any of the reserves under the supplementary articles to the Choctaw treaty of 1830, although the same is derived only by construing both instruments together as forming but one treaty. *Opinion of Nov.* 1, 1831, 2 Op. 465.

16. Technical rules of construction ought never to be applied to such treaties, but they should be construed liberally, according to their spirit, and so as to give the Indians all the advantages and facilities in their removal which appear to have been contemplated. *Ibid.*

17. The sale may be approved either before or after the survey, at the discretion of the President, who also has power to accept a relinquishment of title from any chief and to pay 50 cents per acre. *Ibid.*

18. As the treaty of 1826 with the Miamies contained an agreement on the part of the United States to grant to certain persons each a quarter section of land out of the territory ceded by it, to be located by the President, no other parcels than those defined can be substituted

for them; for the President must execute the treaty according to its stipulations. *Opinion of May* 13, 1833, 2 Op. 563.

19. The land which was ceded to the United States by the Creek Indians by the treaty of March 24, 1832, wherein certain rights of selection were reserved to ninety of the principal chiefs and to heads of families, but being unsurveyed no selections have yet been made therein, cannot be entered upon by white settlers; and those who have entered and taken possession, under pretense of permission from the Indians, are intruders on land of the United States. *Opinion of Aug.* 22, 1833, 2 Op. 575.

20. The three Pottowatomie treaties of 1832 may be considered as forming one transaction, and, except where special provision is otherwise made, the lands agreed by any one of them to be granted by the United States to individuals may be located within the limits of the cession made by any one of the three, provided the party entitled to the grant assents thereto, and the President so directs. *Opinion of Jan.* 26, 1836, 3 Op. 33.

21. A widow keeping house, and having children or other persons with her, is the head of a family within the meaning of the fifth article of the treaty with the Chickasaws of 24th of May, 1834. If her children, or other persons residing with her, however, are provided for in the sixth or eighth articles, they cannot be included in the family enumeration. *Opinion of Feb.* 5, 1836, 3 Op. 34.

22. Widows keeping house without children or other persons residing with them are, if they own slaves, entitled to the section or half section given by the fifth article, according to the number of their slaves. *Ibid.*

23. As many surviving Indian wives as were heads of families at the making of the Chickasaw treaty of 1834 (though wives of the same Indian) are entitled to the reservations made in the fifth article thereof. *Opinion of Feb.* 27, 1836, 3 Op. 41.

24. The reservees named in the supplement to the Choctaw treaty of September 27, 1830, may, with the approbation of the President, sell and convey their reserves. *Opinion of March* 18, 1836, 3 Op. 48.

25. The reservations under the Choctaw treaty of 1830 may be located on the sections granted in the act of March 2, 1819, chap. 47, to Alabama for the use of schools, notwithstanding said act, for the reason that the United States could only grant subject to the Indian right of occupancy. The contingency was provided for in the authority given for the granting of equivalent contiguous lands where section 16 was disposed of. There was no such proviso, however, in the offer of lands to Mississippi. *Opinion of March* 31, 1836, 3 Op. 56.

26. Under the second clause of the supplementary articles of September 23, 1830, to the treaty of Dancing Rabbit Creek, Allen Yates and wife are each entitled to two sections of land. *Opinion of May* 3, 1836, 3 Op. 106.

27. In the event of the death of reservees under the Choctaw treaty of 1830 before the expiration of five years' residence upon the land, required as a condition precedent to a grant and fee-simple, the interest is not defeated, but goes to those persons who, by the State laws, succeed to the inheritable interest of individual Indians. *Opinion of May* 3, 1836, 3 Op. 107.

28. Where the *grant* of a reservation is the essence of the treaty provision (as in the Choctaw treaty of 1830) the direction as to the manner in which the same shall be located ought not to be so construed as to defeat the grant. *Opinion of May* 9, 1836, 3 Op. 113.

29. Locations of sections, or parts of sections, should be made by taking whole, half, or quarter sections, as the case may be, without breaking up the legal divisions or disturbing sectional lines. In the case of Wall, under the supplementary articles of September 23, 1830, to the treaty of Dancing Rabbit Creek: *Held*, therefore, that the reservee is entitled to the half section on which his improvement is located, and the whole of that chosen for the balance. *Opinion of May* 10, 1836, 3 Op. 114.

30. In case an investment of funds arising from the sale of land, as provided in the eleventh article of the Chickasaw treaty of 1834, cannot be made in stocks having twenty years to run, it will be proper to invest such funds in stocks redeemable at a later day. *Opinion of Jan.* 30, 1837, 3 Op. 170.

31. Indian reservees under a treaty have a right paramount and superior to any grant of sections to States. Until their title shall be fully extinguished the grants of Congress cannot operate. *Opinion of April* 15, 1837, 3 Op. 205.

32. The stipulation contained in the treaty

of March, 1836, with the Ottawa and Chippewa Indians, for the right of hunting on the land ceded, and the other usual privileges of occupancy, until the land should be required for settlement, reserved its use for all the purposes of Indian occupancy as the same then existed. *Opinion of April* 20, 1837, 3 Op. 206.

33. A general approval indorsed on an Indian's petition for authority to alienate his reserve under the treaty with the Ottawas, &c., of the 29th August, 1821, is a valid consent; such having in 1822 been the mode adopted by the President for the exercise of his supervision. *Opinion of April* 22, 1837, 3 Op. 209.

34. The reservees under the Creek treaty of 1814, and the act of March 3, 1817, chap. 88, have not power to lease their lands; the renting for a term of years and removal from the State may be regarded as an abandonment of their reservations. *Opinion of May* 23, 1837, 3 Op. 230.

35. On their abandonment the title becomes immediately vested in the United States, by operation of law, and is to be then treated as if then for the first time acquired by the treaty. *Ibid.*

36. The moneys received from the sale of reservations located for Creek orphans, under the treaty with the Creeks of March 24, 1832, were properly brought into the Treasury, and may be drawn out for investment or payment whenever the President shall direct. *Opinion of June* 2, 1837, 3 Op. 238.

37. The first and second classes of Indian reservees provided for in the thirteenth article of the treaty of December, 1835, with the Cherokees, are entitled to compensation in money, in lieu of their interests, notwithstanding the supplementary articles concluded after the refusal of the President to allow preemptions. *Opinion of Dec.* 6, 1837, 3 Op. 297.

38. In respect to the third class there is yet doubt; yet the Attorney-General, on the whole, concludes that the reservees of that class are also entitled, individually, to compensation in money. *Ibid.*

39. The compensation to the first and second classes must be paid from the $600,000 set apart in the supplementary articles. *Ibid.*

40. The persons entitled to pecuniary compensation for reservations under the thirteenth article of the treaty of December, 1835, with the Cherokees, are not entitled under the ninth article for improvements on the same reservations. The balance of the fund of $600,000, after defraying from it the expenses of removal, which is the first charge upon it, was that designated by the treaty for the satisfaction of the various claims provided for therein; if sufficient, to be ratably distributed and the balance to be charged to the general fund of $5,000,000. There is no occasion for dividing the $600,000, as the several agreements concerning compensation and spoliations are to be considered as one treaty. *Opinion of Feb.* 3, 1838, 3 Op. 304.

41. Under the treaties of 1817 and 1819 with the Cherokees the reservees therein could not properly locate their lands outside the limits of the cessions respectively; but as some of the reservations of 1817 were located within the lands ceded in 1819, and were included in the unceded lands under the latter treaty, these cases are to stand on the same grounds as other reservations under the treaty of 1817, and equally entitled, under the treaty of 1835–'6, to compensation with those who located within the cession of 1817. *Opinion of May* 14, 1838, 3 Op. 327.

42. But no provision has been made for those whose reservations under treaties of 1817 and 1819 were located within the cessions of 1835–'6; and as such reservations are not within the thirteenth article of the treaty of 1835–'6, they were unauthorized, and are not to be paid for as improved lands; but the holders are only entitled to pay for their improvements. *Ibid.*

43. Reservations claimed under the treaties of 1817 and 1819 not being ceded by the first article of the treaty of 1835–'6, are not within the words nor intention of the ninth article of the latter; hence the reservees who may be entitled to compensation under the thirteenth article of the last-mentioned treaty cannot claim pay under the ninth article thereof for improvements on the same reservations. *Ibid.*

44. But those who were to receive grants for their reservations are entitled to pay for the soil and their improvements thereon. *Ibid.*

45. The children of the reservees, under the eighth article of the treaty of 1817, were entitled to reservations in fee simple. *Ibid.*

46. The residence of heads of Choctaw families who in due time signified to the agent their intention to remain and become citizens

of the United States, or a valid excuse for non-residence, entitles them to grants pursuant to the treaty; and such grants when made are paramount to pre-emption and all other claims. *Opinion of Aug.* 17, 1838, 3 Op. 365.

47. The War Department, however, should endeavor to avoid interference with the rights of settlers whenever it can be done consistently with the provisions of the treaty. *Ibid.*

48. The removal of the Creek reservees from their reserved lands, without the intention of returning and occupying them as their place of residence, is an abandonment, which gives the right of possession and occupancy to the United States, and the right of the United States, under such circumstances, accrues and becomes complete immediately upon such abandonment. *Opinion of Nov.* 19, 1838, 3 Op. 389.

49. The only requisites to a title to reservations under the treaty of Dancing Rabbit Creek of September 27, 1830, indicated in the treaty, are, that the persons applying be Choctaws, and heads of families, and shall signify their intention of becoming citizens of the States within six months from the ratification of the said treaty. *Opinion of Jan.* 30, 1839, 3 Op. 408.

50. The Wyandotte nation of Indians have the authority to treat with the United States respecting the reservation of twelve miles square, at and about Upper Sandusky, in the State of Ohio, as the supplement to the treaty of 1817 reinvested them with their title in trust. *Opinion of April* 20, 1839, 3 Op. 458.

51. The treaty of 1837 with the Winnebagoes provided that certain payments, therein stipulated to be made, should be made by the President of the United States, and with which the judiciary cannot rightfully interfere; and the agents appointed by the President may proceed to make the payments, in disregard of any writs of injunction which the judiciary may allow. *Opinion of Sept.* 7, 1839, 3 Op. 471.

52. The judiciary cannot arrest the execution of a treaty by stopping the money designed to be paid under it in the hands of the agents of the Executive. *Ibid.*

53. The approval by the President of the location of certain lots by reservees, under the Winnebago treaty of August 1, 1829, vests a title in the reservees that is superior to that of certain Polish exiles who located April 18, 1836, under act of June 30, 1834, chap. 247. *Opinion of Aug.* 1, 1840, 3 Op. 584.

54. Under the Cherokee treaty of New Echota of 1835, for the adjustment of all the claims provided for therein, the President has power to appoint new commissioners. *Opinion of July* 20, 1842, 4 Op. 73.

55. The expense of such commission cannot be defrayed out of the Cherokee fund, but must be from appropriations to be made by Congress. *Ibid.*

56. The jurisdiction and authority of the present commissioners, under the treaty with the Cherokees of 1835, is limited to cases under the treaty which were not disposed of by the former board. *Opinion of May* 19, 1843, 4 Op. 175.

57. The allegation that the former board rejected the claim through mistake in nowise affects the question of jurisdiction. If there were a mistake, and a wrong done in consequence of it, the claimant can obtain redress only by an appeal to Congress. *Ibid.*

58. The same Indian cannot be allowed a claim under both the fourteenth and the nineteenth articles of the Choctaw treaty of September 27, 1830, called the treaty of Dancing Rabbit Creek. (Compare opinion of Sept. 9, 1831, 2 Op. 462.) *Opinion of Nov.* 18, 1845, 4 Op. 452.

59. A claimant under the fourteenth article of that treaty, who complied with its requisitions, and who was expelled from his land by the force or was induced to leave it by the fraud of the Government or its agents, by virtue of a sale of his land made by the Government, has not forfeited his rights under the treaty and the act of August 23, 1842, chap. 187. *Ibid.*

60. The certificate of the Indian agent in reference to the facts upon which the Choctaw claims are based is not conclusive testimony for any purpose beyond the act of Congress. *Ibid.*

61. The Attorney-General intended, in his opinion of November 18, 1845 (4 Op. 452), to advise that a claim, under the fourteenth article of the Choctaw treaty of 1830, and the act of August 23, 1842, chap. 187, might be perfected even though the Indian had temporarily lost the possession by the tortious acts of unauthorized individuals, he having in all other

respects complied with the requisitions of the law. *Opinion of July* 23, 1846, 4 Op. 513.

62. The claims of Cherokees for the value of alleged pre-emption rights, asserted under the treaty of 1835–6 with that nation, are inadmissible under the convention as the same was ratified. *Opinion of May* 8, 1847, 4 Op. 561.

63. Reservees, under the treaty of 1835–6 with the Cherokees, who disposed of their lands, are not entitled to compensation for improvements thereon, as they passed with the soil. *Opinion of May* 18, 1847, 4 Op. 580.

64. A Choctaw head of a family entitled, under the fourteenth article of the treaty of Dancing Rabbit Creek (September 27, 1830), to a reservation of land, who gave the notice, made the claim, and continued the residence therein required, is entitled to a patent, although the agent, whose register a former Executive declared to be the evidence in such cases, failed to make the necessary entry, inasmuch as a subsequent agent did make entry of the facts and location and certified them to the General Land Office. *Opinion of Sept.* 17, 1850, 5 Op. 252.

65. The treaty under which the right has accrued is silent concerning any such register as that required to be kept by the agent. *Ibid.*

66. By the third section of the act of 27th February, 1851, chap. 14, it was provided that all Indian treaties thereafter negotiated should be negotiated only by such officers and agents of the Indian department as the President should designate for that purpose. That act applies as well to treaties negotiated, but not concluded at the date of its passage, as to those not then authorized. It peremptorily required all Indian treaties thereafter to be made to be negotiated by the agents and officers designated by the law. *Opinion of March* 18, 1851, 5 Op. 305.

67. Hence the commissioners to negotiate treaties with the Mississippi and St. Peter Sioux and half-breeds for the extinguishment of their title to lands in Minnesota, appointed on the 1st of February, 1851, were superseded by the said law. *Ibid.*

68. The third section of the act went into effect immediately upon its passage. *Ibid.*

69. Acts of Congress directing the payment of annuity money to individuals of Miami Indians residing in the State of Indiana, are not in contravention of treaty stipulations between the United States and the Miami Indians. *Opinion of May* 4, 1854, 6 Op. 440.

70. Indian treaties are only required to be printed for promulgation in one newspaper, and that in the State or Territory to which the subject-matter of the treaty belongs. *Opinion of July* 25, 1854, 6 Op. 627.

71. By the treaties of 1854 between the United States and the Delaware, Ioway, and Wea Indians in the Territory of Kansas, the latter ceded certain lands to the United States on condition that a part of the same should be held in trust by the United States to be sold at public auction for the benefit of such Indians. Afterwards, by the act of July 22, 1854, chap. 103, all the lands in the Territory to which the Indian title had been extinguished, were made subject to the laws of pre-emption: *Held*, that the statutory provision referred to does not include the lands thus reserved by the treaties for public sale for the benefit of the Indians. *Opinion of Aug.* 12, 1854, 6 Op. 658.

72. A professed award for the value of an improvement under the provisions of the Cherokee treaty of 1835, which was made by the commissioners in blank as to the sum, can not be paid as an award in virtue of the act of July 31, 1854, chap. 167, making appropriations for the execution of that treaty. *Opinion of Feb.* 26, 1855, 7 Op. 54.

73. The Choctaws and Chickasaws, who, in 1837, formed a political union by an agreement between the two nations, submitted to and ratified by the Senate of the United States, can not dissolve that union except in like manner by convention approved by the Senate and the President of the United States. *Opinion of May* 16, 1855, 7 Op. 142.

74. In the treaty with the Delawares of May 6, 1854, a provision was inserted that there shall be confirmed by patent to the Christian Indians, subject to such restrictions as Congress may provide, a quantity of land equal to four sections, upon certain conditions, which were complied with. No restrictions were imposed by Congress, and the Christian Indians, desiring to sell the land, made application for a patent: *Held*, (1) that a patent for the four sections of land mentioned in the first article of the treaty with the Delawares should be issued to the Christian Indians in the common form; (2) such patent will enable the patentees

to hold the land, not by the original title of the Delawares, but as absolute owners in fee under the United States; (3) the rights which patentees would otherwise have to alienate their lands may be restricted by act of Congress after the patent shall issue as well as before; (4) no such restriction can be rightfully made if it would have the effect of invalidating the title of a *bona fide* purchaser by a legal conveyance from the patentee; (5) the title of the Christian Indians will not be vested in the individuals comprising the tribe called by that name, as tenants in common, but in the tribe itself or nation; (6) no private person can procure a conveyance from the tribe, or even negotiate with it for that purpose, without making himself an offender against the act of Congress of June 30, 1834; (7) the tribe may part with its lands by a treaty or convention pursuant to the Constitution and the law. *Opinion of May* 14, 1857, 9 Op. 25.

75. Construction of the article of the treaty of January 13, 1865, with the Wyandotte Indians relative to the sale of lands allotted to the incompetent members of the tribe. *Opinion of April* 17, 1865, 11 Op. 197.

76. Where, under the treaty of May 10, 1854, between the Shawnee tribe of Indians and the United States, the Missionary Society of the Methodist Episcopal Church designated a person to whom the grant of land made in that treaty to the society should be confirmed, and such person applied $10,000 to the education of the Shawnees: *Held*, that the person so designated was entitled to a patent, although the society may have had an equity in the land prior to the treaty of 1854. *Opinion of May* 12, 1865, 11 Op. 145.

77. The United States can rightfully make no treaty which would deprive the person mentioned of his right to the land. *Ibid.*

78. Where an Indian treaty provided for a sale of lands by the Secretary of the Interior to the highest bidder for cash, and also provided that he might sell the whole of the lands not occupied by actual settlers in a body to any responsible party for cash for a sum named per acre: *Held*, that the Secretary had no power to sell otherwise than for cash in hand. *Opinion of Oct.* 4, 1866, 12 Op. 57.

79. The provision for a responsible party is not inconsistent with the provision for a sale for cash. *Ibid.*

80. The contract made by the Secretary of the Interior for the sale of the Cherokee neutral lands to the American Emigrant Company not being in conformity with the power of sale vested in him by the treaty with the Cherokee Nation, ratified on the 31st of July, 1866, the Department is advised to notify the company that it declines to carry the same into execution. *Ibid.*

81. The board of trustees of the Ottawa University, of which J. S. Emery was elected a member in January, 1869, and subsequently chosen president, was legally constituted under the provisions of the treaty with the Ottawa tribe of Indians of June 24, 1862. *Opinion of Nov.* 10, 1870, 13 Op. 336.

82. The words, "the said Ottawa Indians," used in the sixth article of that treaty, mean certain individual Indians therein named, and not the whole tribe in its tribal capacity. *Ibid.*

83. The fourth article of the treaty of 1859 with the Kansas Indians, which provides for a sale of the lands therein mentioned in parcels not exceeding one hundred and sixty acres each to the highest bidder for cash, evidently means that each parcel must be sold to the person making the highest bid for that particular parcel. *Opinion of Sept.* 18, 1871, 13 Op. 532.

84. A bid made upon condition that the whole of the lands shall be awarded to the bidder, there being higher bids from other parties for part of the lands, cannot properly be accepted with such condition; as, under the circumstances, this would be, in effect, a sale of the land in the aggregate and not in parcels, and would defeat the plain purpose of the treaty. *Ibid.*

85. The *effect* of the stipulation contained in the second article of the treaty with the Cheyenne and Arapahoe Indian tribes of October 28, 1867, is to render it *unlawful* for any persons to enter or reside upon the reservation established by that treaty except those who are authorized so to do by the treaty, and except certain officers, agents, and employés of the Government. *Opinion of Sept.* 1, 1874, 14 Op. 452.

86. Stipulations in Indian treaties existing prior to June 20, 1874, for the payment of annuities, &c., are contracts within the meaning of the second *proviso* of the fifth section of the

act of June 20, 1874, chap. 328, and their fulfillment is not to be prevented by any operation given to that section. *Opinion of July* 5, 1877, 15 Op. 632.

87. Article 2 of the treaty with the Creek Indians of March 24, 1832—in providing that twenty sections of the lands therein referred to should be selected under the direction of the President for the orphan children of the Creeks, and divided and retained or sold for their benefit, as the President might direct—intended to make provision for those who were then orphan children of the Creeks, not those who might afterwards become such. *Opinion of June* 6, 1878, 16 Op. 31.

88. The taking of $176,755.97 by the Indian Bureau from the accrued interest arising from investments of the proceeds of the sale of those lands, known as the Creek orphan fund, and the expending of the same by the bureau for the benefit of the loyal refugees of the Creek tribe during the years 1863 to 1865, was a diversion of the fund not authorized by the said treaty of 1832 nor by subsequent legislation. *Ibid.*

89. The assent of the Creek tribes in the eleventh article of the treaty of June 14, 1866, to the diversion of the annuities which had been made from the funds of the tribe, cannot be interpreted as an assent to the diversion of the Creek orphan fund; nor has this diversion been ratified by the Creeks by any subsequent treaty. *Ibid.*

90. The Department of the Interior has no authority to remedy the diversion of the Creek orphan fund by restoring the moneys. Relief can only be obtained through Congressional action. *Ibid.*

91. In the absence of an act of Congress authorizing it, the President has no authority to appoint a new board of commissioners (under the seventeenth article of the treaty of 1835–'36, with the Cherokee Indians) to hear and decide all matters between the United States and the Eastern Band of Cherokee Indians, and also all differences between them and the Cherokee Nation. *Opinion of Dec.* 3, 1878, 16 Op. 225.

92. The question considered in opinion of December 3, 1878 (16 Op. 225), relative to the authority of the President to appoint a new board of commissioners under the seventeenth article of the treaty of 1835–'36 with the Cherokee Indians, re-examined, and the same conclusion reached as is indicated in that opinion. This conclusion is here based solely on the ground that by the act of June 27, 1846, chap. 34, which revived the commission and prohibited its continuance beyond one year, the intent is manifest that it should not again be revived or renewed, and that the power of Congress to put an end to the operation of said treaty provision cannot be questioned. *Opinion of April* 7, 1879, 16 Op. 300.

93. In executing certain treaties with the Cherokee Nation providing for the removal of intruders, the Government is not bound to regard simply the Cherokee law and its construction by the counsel of the nation, but the department required to remove alleged intruders must determine for itself, under the general law of the land, the existence and extent of the exigency upon which such requirement is based. *Opinion of Dec.* 12, 1879, 16 Op. 404.

94. Under article 16 of the Cherokee treaty of 1866 the lands west of the ninety-sixth degree of longitude, to which it refers, are reserved to the United States, upon the conditions there named, for the settlement thereon of tribes of friendly Indians. The possession of and jurisdiction over these lands until thus disposed of, which are retained by the Cherokee Nation under the same article, give to that nation no right to settle its citizens upon the lands so long as the right reserved by the United States to settle friendly Indians thereon subsists. Hence authority to settle there, derived from the Cherokee Nation, is not sufficient: *Held*, accordingly, where certain persons claiming to belong to the Cherokee Nation attempted to settle upon the lands mentioned, that their removal therefrom by the military authorities was justifiable. *Opinion of Feb.* 25, 1880, 16 Op. 470.

III. With Foreign Nations.

95. The term "prosecutions," employed in the sixth article of the treaty of 1783 with Great Britain, imports a suit against another in a criminal cause; such prosecutions being conducted in the name of the public, and under the control of the Government. *Opinion of Aug.* 5, 1794, 1 Op. 50.

96. Commissioners to carry into execution a

treaty must all agree in their decisions, subscribe their names, and attach their seals thereto. *Opinion of July* 23, 1796, 1 Op. 66.

97. Public officers should furnish authenticated copies of documents in their custody to be used as evidence before commissioners under the sixth article of the treaty of 1794 with Great Britain. *Opinion of Jan.* 3, 1798, 1 Op. 82.

98. An award by commissioners, under the seventh article of the treaty of 1794 with Great Britain, to several persons collectively is conclusive upon the matter, so far that the right to transfer is vested in all persons in favor of whom it is made, and if those concerned have neglected to have invested in it the amount of their respective interests, or if they disagree as to their several proportions, the embarrassments are attributable to themselves. The Government cannot undertake to decide among them. *Opinion of Dec.* 24, 1805, 1 Op. 153.

99. Under the treaty of 1794 with Great Britain, merchandise carried from any place in British America by the subjects of Great Britain into the northern districts of the United States is subject to the same duties which would be payable by our citizens on the same goods imported from the same place in American ships into the Atlantic ports of the United States. *Opinion of March* 22, 1806, 1 Op. 155.

100. The provision in the treaty relating to duties on goods, &c., does not extend to tonnage duties or light-money. *Ibid.*

101. The Department of State was made the depository, by stipulation, of the records and papers referred to in the eleventh article of the treaty of 1819 with Spain, and they must not be delivered up to claimants; and any law of Congress that shall authorize or require their delivery will be a violation of that treaty. *Opinion of May* 18, 1832, 2 Op. 515.

102. The schooner Amistad, a Spanish vessel, having cleared from one Spanish port bound to another, with regular papers, and a cargo of merchandise and slaves; and whilst at sea being subjected to the control of the negroes on board, by their rising upon the whites and killing the captain, his servant, and two of his seamen, and assuming command with a view to carry the vessel to the coast of Africa; but failing in that object, through the contrivance of two white Spaniards, who run her near to the United States, when she was taken by a vessel of the United States and sent into New London for examination and such proceedings as the law of nations warranted and required; and being demanded, with the negroes, by the Spanish minister, under the ninth article of the treaty of 27th October, 1795, between Spain and the United States: *Held*, that the case is within said ninth article of the treaty, and that the vessel and cargo be restored to the owners, as far as practicable, entire. *Opinion of Nov.* —, 1839, 3 Op. 484.

103. The act of August 11, 1848, chap. 150, to carry into effect certain provisions in the treaties between the United States and China, and the Ottoman Porte, giving certain judicial powers to ministers and consuls of the United States in those countries, not having designated any particular place for the confinement of prisoners arrested for crime, the same is left for regulation under the fifth section, or, in the absence of any such regulation, to the discretion of the acting functionary. *Opinion of Jan.* 17, 1849, 5 Op. 67.

104. The expenses of arrest and support in prison in such cases must be paid from the fund created by the execution of the act. *Ibid.*

105. As the provisions of the act extend to Turkey only in respect to crimes, such crimes are left to support their own expenses. *Ibid.*

106. The provisions of the eighteenth section do not apply to Turkey. *Ibid.*

107. Whether the act embraces Egypt and the Barbary States, which are under the dominion of the Ottoman Porte, is a political question, which cannot be solved without the aid of the Department of State. *Ibid.*

108. Report to the President as to the investigation and prosecution of fraudulent claims preferred by and paid to Gardiner, under the treaty of 1848 with Mexico, called the treaty of Guadalupe Hidalgo. *Opinion of April* 15, 1853, 8 Op. 427.

109. There is nothing in the convention between the United States and Great Britain of April 19, 1850, which forbids either of the contracting parties to intervene, if either of them see fit, by alliances, influence, or even arms, in the affairs of Central America. *Opinion of May* 28, 1853, 8 Op. 436.

110. The statute provision for the surrender of deserting seamen applies only to the seamen

of governments with which a treaty exists to that effect. *Opinion of Oct.* 14, 1853, 6 Op. 148.

111. There is no express provision to that effect in existing treaties between the United States and Denmark. *Ibid.*

112. Engagements of extradition, whether of fugitives from justice or from service, stand in each case on particular stipulations of treaty, and are not to be inferred from the "favored-nation" clause in treaties. *Ibid.*

113. Under the treaty between the United States and Great Britain of June 5, 1854, the President cannot issue his proclamation giving effect to the treaty as to Canada alone in anticipation of the action of New Brunswick, Nova Scotia, and Prince Edward's Island; nor until he shall have received evidence, not only of the action of those provinces but also of the imperial Parliament. *Opinion of Oct.* 3, 1854, 6 Op. 748.

114. By the treaty of 1842 between the United States and Great Britain (article 10) the expense attending the proceedings in extradition is to be borne by the Government making the reclamation. *Opinion of Aug.* 23, 1855, 7 Op. 396.

115. But where, in consequence of conflict between the judicial authorities of the United States and those of a State, the latter aiming to prevent the extradition, the United States intervenes to maintain its own dignity in the premises, the special expenses of such intervention should be defrayed by the United States. *Ibid.*

116. By the terms of the treaty of 1853 with Mexico, called the Mesilla treaty, $7,000,000 were to be paid to the Mexican Republic on the exchange of ratifications, and three millions were to become due when the new boundary line should be surveyed, marked, and established. *Opinion of Oct.* 29, 1855, 7 Op. 582.

117. The "establishment" of the line consists of the official agreement of two commissioners, appointed, one by each Government, to survey, mark, and establish the line; and that agreement, when duly made, is conclusive against both Governments. *Ibid.*

118. According to the public law of the monarchies of Europe, the authority of ministers, and perhaps of international commissioners, expires on the death, deposition, or abdication of the prince; but not so as between the American republics, in which the executive power is permanent and continuous, without regard to the governing person, and there is no interruption of the authority or renewal of the credentials of their public ministers on a change of President for whatever cause, provided such President continues to represent and exercise the appointing power of the Government. *Ibid.*

119. The United States observe, as their rule of public law, the recognition of governments *de facto*, and also of governing persons *de facto*, without scrutiny of the question of legitimacy of origin or accession. *Ibid.*

120. Hence, in this case, the Mexican commissioner, Mr. Salazar, being duly appointed by President Santa Anna, continued to be competent to act after the sequent accession of President Carrera, and his official agreement signed then, if otherwise regular and complete, definitively establishes the line as respects the Mexican Republic. *Ibid.*

121. To establish the line, it is not requisite that the maps contemplated by the treaty shall first have been made; that is not the establishment of the line, but only the record or history of its survey. *Ibid.*

122. The judicial authority of the United States commissioner to China is restricted to the five ports mentioned in the treaty with that nation, namely: Kwang-Chow, Amoy, Fuchow, Ning-Po, and Shanghai. *Opinion of March* 16, 1859, 9 Op. 294.

123. Under the treaty of 1851 with Peru, the United States are not bound to pay a consul of the Peruvian Government the value of property belonging to a deceased Peruvian, on whose estate the consul was entitled to administer, which may have been unjustly detained and administered by a local public administrator. *Opinion of Aug.* 2, 1859, 9 Op. 383.

124. An award under the convention of 1863 with Peru, "payable in current money of the United States," may legally be paid either in Treasury notes or in specie. *Opinion of July* 12, 1864, 11 Op. 52.

125. The thirty-fifth article of the treaty of June 12, 1848, between the United States and New Granada, binds this Government absolutely to guaranty the perfect neutrality of the Isthmus of Panama, on the demand of the proper party; and this obligation must be performed by any and all means which may be

found lawful and expedient. *Opinion of Aug.* 18, 1864, 11 Op. 67.

126. The thirty-fifth article of the treaty between the United States and New Granada does not oblige this Government to protect the Isthmus of Panama from invasion by a body of insurgents from the United States of Colombia. *Opinion of Nov.* 7, 1865, 11 Op. 391.

127. The convention of February 10, 1864, with the United States of Colombia confers on the commission thereby created jurisdiction to determine, and it should determine, whether any and what claims had been presented to, but not decided by, the commission under the treaty with New Granada of Sept. 10, 1857. *Opinion of Nov.* 18, 1865, 11 Op. 402.

128. The provisions of the treaty of May 1, 1828, between the United States and Prussia, for the arrest and imprisonment of deserters from public ships and merchant vessels of the respective countries, applies to public vessels sailing under the flag of the North German Union and deserters from such vessels. *Opinion of Aug.* 19, 1868, 12 Op. 463.

129. The annual installments of interest due to the United States under the convention with Spain of February 17, 1834, may, by virtue of the legal-tender act of February 25, 1862, chap. 33, be paid in Treasury notes, if the Spanish Government chooses to offer them in payment, there being no express provision in the convention that the money shall be paid in coin. *Opinion of June* 10, 1869, 13 Op. 85.

130. A citizen of the North German confederation, who becomes a naturalized citizen of the United States, must have an uninterrupted residence of five years in the United States before he is entitled to the immunities guaranteed by the treaty with that confederation of February 22, 1868. The recital contained in the record of the naturalization proceedings, that he had resided continuously in this country for more than five years, is not conclusive as to the fact so recited. *Opinion of Jan.* 21, 1871, 13 Op. 376.

131. The passenger tax of $2 per head levied in the year 1849 and subsequent years by the State of Panama, a province of the Republic of New Granada, under authority from that republic, upon the captains of all vessels embarking or disembarking passengers in that State, was in substance and effect, so far as it affected citizens of the United States passing across the Isthmus of Panama, a violation of the thirty-fifth article of the treaty between the United States and New Granada of December 12, 1846, which provided that the right of way or transit across the said isthmus "should be open and free to the Government and citizens of the United States," &c. *Opinion of Dec.* 28, 1871, 13 Op. 547.

132. By the first article of the convention of September 20, 1870, between the United States and the Austro-Hungarian monarchy, the right of an American citizen to change his nationality and become a citizen of Austria is recognized; but he must have had a residence of five years in that country, besides being naturalized there, before the United States are bound to consider him as such. *Opinion of Dec.* 21, 1872, 14 Op. 154.

133. So much of article 30 of the treaty between the United States and Great Britain, of the 8th of May, 1871, called the Treaty of Washington, as relates to the transportation of merchandise in British vessels, without payment of duty, from one port or place within the territory of the United States to another port or place within the same territory, examined and construed. *Opinion of Oct.* 13, 1873, 14 Op. 310.

134. Under the provisions of that article a British vessel may, during a single voyage, ship merchandise at two or more ports of the United States in succession on the river Saint Lawrence, the Great Lakes, and the rivers connecting the same—the merchandise being destined for other ports of the United States, and to be carried part of the way through Canada by land, in bond—and after thus completing her cargo sail to the port or place in Canada where the land-carriage is to begin. *Ibid.*

135. Such vessel may also, after taking a cargo of merchandise abroad at a Canadian port, to which the same had been transported from a port of the United States part of the way overland in bond and part of the way by water in the manner above indicated, sail thence to two or more ports of the United States on the above-mentioned waters, in succession, during a single voyage, and deliver at each port whatever part of the cargo is consigned thereto. *Ibid.*

136. By virtue of the second article of the treaty with Sweden of April 3, 1783, and the eighth and seventeenth articles of the treaty

with Sweden and Norway of July 24, 1827, the provisions of article 4 of the treaty with Belgium of July 17, 1858, exempting steam-vessels of the United States and of Belgium, engaged in regular navigation between their respective countries, from the payment of duties of tonnage, anchorage, buoys, and light-houses, became immediately applicable, *mutatis mutandis*, to steam-navigation between the United States and Sweden and Norway. *Opinion of Oct.* 24, 1874, 14 Op. 468.

137. Hence, since the 17th of July, 1858, the steamers of the Norse American line (being Swedish and Norwegian vessels), plying regularly between Norway and the United States, have not been liable to the payment of the above-mentioned duties at American ports; and the owners thereof are entitled to have refunded to them any moneys they have paid to the customs officers of the United States for such duties subsequent to that date. *Ibid.*

138. Provisions of the ninth article of the treaty with the Hanseatic Republics of December 20, 1827, together with the provisions of the fourth article of the treaty with Belgium of July 17, 1858, considered with reference to the question whether the North German Lloyd Steamship Company is entitled to a refund of the tonnage tax collected in ports of the United States on that company's steamers, whose home port is Bremen; and *held*, upon the facts presented, that the steam-vessels of Bremen plying regularly between that port and the United States have, during the entire period subsequent to the date of the ratification of said treaty with Belgium, been exempt from such tax in American ports by force of the ninth article of said treaty with the Hanseatic Republics: *Held, also*, that where the tax has been exacted and collected from such vessels in American ports, at any time within that period, it should be refunded. *Opinion of Feb.* 20, 1875, 14 Op. 530.

139. The right "to sit as judges and arbitrators in such differences as may arise between the captains and crews," given to consuls, vice-consuls, &c., by article 13 of the treaty with Sweden and Norway of 1827, is limited to the determination or arbitrament of disputes and controversies of a civil nature, and does not extend to the cognizance of offenses. *Opinion of Dec.* 14, 1876, 15 Op. 178.

140. If the conduct of the captains or of the crews, where differences arise between them, is such as to "disturb the order or tranquillity of the country" (which includes all acts, as against each other, amounting to actual breaches of the public peace), the right of the local authorities to interfere, in the exercise of their police and jurisdictional functions, is reserved in said article. *Ibid.*

141. *Semble* that a more enlarged jurisdiction is conferred upon consuls in some other treaties, as, *e. g.*, in the treaty with France of February 23, 1853, in the treaty with the German Empire of December 11, 1871, and in the treaty with Italy of February 8, 1868. *Ibid.*

142. The term "fishery," in the legal parlance of the United States and Great Britain, primarily denotes one of that class of objects of property known as *things incorporeal;* and such is its signification as used in article 21 of the treaty of May 8, 1871, between those countries. *Opinion of March* 8, 1878, 15 Op. 661.

143. Accordingly the phrase in that article, "produce of the fisheries of the United States, or of the Dominion of Canada, or of Prince Edward Island," covers only the produce of incorporeal things so denominated belonging to those governments respectively. *Ibid.*

144. Canada and Prince Edward Island derive no right under the treaty to import into the United States free of duty fish, &c., caught by their subjects no matter where, nor do the United States derive thereunder a corresponding right against Canada and Prince Edward Island. *Ibid.*

145. The provision in article 21 of the treaty of Washington, of May 8, 1871, that "fish-oil * * * being the produce of the fisheries of the United States, or of the Dominion of Canada, or of Prince Edward Island, shall be admitted into each country, respectively, free of duty," does not include cod-liver oil which has been purified and refined for medicinal purposes, whether it is put up in barrels or other kind of package. Such cod-liver oil is dutiable. *Opinion of June* 5, 1878, 16 Op. 601.

146. Under article 30 of the treaty of Washington, of May 8, 1871, and article 19 of the regulations made under the first-mentioned article to carry its provisions into execution, it is lawful to transport goods by means of British or American vessels from the ports of Chicago or Milwaukee to points in Canada, thence

through Canadian territory by rail, and from the termini of the lines of railway by either British or American vessels to the ports of Oswego and Ogdensburg. *Opinion of June* 10, 1878, 16 Op. 42.

147. The above-named ports are "ports on the northern frontier of the United States" within the meaning of said regulations. *Ibid.*

148. The tonnage tax collected from the steamer Smidt in the years 1868, 1869, 1870, and 1872 (it having arrived at the port of New York from Bremen four times in the year 1868, five times in 1869, twice in 1870, and four times in 1872), was exacted in contravention of the treaty of December 20, 1837, between the United States and the Hanseatic Towns; the ninth article of which treaty (containing the most favored clause), when read in connection with the fourth article of the treaty of July 17, 1858, between the United States and Belgium, providing that steam-vessels of the United States and the Hanseatic Towns in *regular* navigation between the United States and the Hanseatic Towns shall be exempt in both countries from the payment of duties of tonnage, &c. *Opinion of Feb.* 28, 1879, 16 Op. 276.

149. The word "regular" in that provision is used in contradistinction to *occasional;* it refers to steam-vessels which, alone or with others, constitute *lines*, and not to such as are regular in the sense of being properly documented. *Ibid.*

150. The exaction of tonnage duty, under section 15 of the act of July 14, 1862, chap. 163, upon Hanseatic vessels is not in contravention of treaty obligations arising out of the treaty between the United States and the Hanseatic Republics of December 20, 1827. *Opinion of May* 7, 1879, 16 Op. 626.

ULTRA VIRES.

See also CORPORATIONS.

A company, incorporated to hold certain buildings in the city of Baltimore as a commercial exchange and for other cognate purposes, cannot sell the said buildings to the United States, and so extinguish their corporate uses without the consent of the State of Maryland. *Opinion of Sept.* 8, 1856, 8 Op. 86.

UNITED STATES.

See also CLAIMS, XXIV.

1. The United States have such a claim to lands formerly used for a highway in Charlestown, by force of proceedings under the act of the legislature of Massachusetts of 30th of October, 1781, and for other reasons, that it ought to be defended. *Opinion of Aug.* 17, 1830, 2 Op. 363.

2. The rights of the United States will not be impaired by the receipt of such part of the dividend declared and payable on the stock of the Government in the Bank of the United States as the bank is willing to pay. *Opinion of April* 6, 1835, 2 Op. 710.

3. When a commissioned officer or other agent of the United States makes a contract with any person for their use and benefit, and with due authority of law, such officer or other public agent is not responsible to the party, whose only remedy is against the Government. *Opinion of April* 10, 1855, 7 Op. 88.

4. But, in making contracts with any one claiming to act for the Government, it is the duty of the party contracting to inquire as to the authority of such agent or officer, without which it is doubtful whether the contract affects the Government. *Ibid.*

5. If a public officer, however, make a Government contract without authority, and which, therefore, does not bind the Government, such officer is himself personally responsible to the contracting party. *Ibid.*

6. But a public officer or other agent, though contracting for the Government, may, if he see fit, make himself the responsible party, either exclusively or in addition to the Government. *Ibid.*

7. The United States may lawfully make title to land in one of the States by expropriation as of the eminent domain of such State, and with assent thereof. *Opinion of April* 24, 1855, 7 Op. 114.

8. The act of the legislature of Maryland empowering the United States to acquire land in said State, for the use of the Washington Aqueduct, is not in conflict with the constitution either of that State or of the United States. *Ibid.*

9. The acquisition of land by the United States, through the means of a statute process of expropriation, is a "purchase," which,

if done in strict accordance with the form of the statute, may be certified by the Attorney-General as vesting a valid title in the United States. *Ibid.*

10. In its internal organization, each government has public officers, administrative, judicial, or ministerial, which officers are the agents of the community for the conduct of its public or common affairs, and of many private affairs, and are individually responsible to their country, and in many cases to individuals, for acts of political or official misbehavior; but the Government itself is not responsible to private individuals for injuries sustained by reason of the acts of such officers in the private business with which they may be officially concerned, though as public agents, yet for individual benefit only; it is responsible only for such injury to individuals as may occur by acts of such officers performed in the proper behoof and business of the Government. *Opinion of May* 27, 1855, 7 Op. 230.

11. Thus, governments hold themselves responsible to individuals for injuries done to the latter by public officers in the collection of the revenue or other administrative acts of governmental relation; but not for the errors of opinion, or corruption even, of administrative, judicial, or ministerial officers, when such officers are administering their public authority in the interest of individuals as distinguished from the government. *Ibid.*

12. Hence, the State of California is not responsible to a citizen of the United States for injury which his vessel may have sustained by the unskillfulness of a pilot at San Francisco; and *a fortiori* that State is not responsible in such case if the vessel belonged to a citizen of the Peruvian Republic. *Ibid.*

13. Hence, also, the United States are not responsible to a citizen of the United States for the failure of a marshal to collect an execution; and *a fortiori* the United States are not responsible in such case if the execution belonged to a citizen of the Peruvian Republic. *Ibid.*

14. In such a case our courts of law are open to the individual who pretends himself aggrieved by the act of the pilot or that of the marshal; but the Government is not surety for their acts; and the Peruvian Republic has no rights of reclamation in the premises against the United States for any imputed default either of its own officer or the officer of the State of California. *Ibid.*

15. *Quære*, whether the property in the West Point chain is or is not in the United States. *Opinion of July* 2, 1855, 7 Op. 311.

16. Jurisdiction is acquired by the United States by the consent of a State to the purchase of land within the same for constitutional uses of the Union. *Opinion of Feb.* 11, 1856, 7 Op. 628.

17. Phrases in legislative acts of the States retaining concurrent jurisdiction for certain purposes do not impair the Federal jurisdiction conferred by the Constitution. *Ibid.*

UNITED STATES BANK.

1. Commissioners appointed under the act of February 25, 1791, chap. 10, incorporating the United States Bank, have no power as such to superintend the election of directors, or to interfere therein. *Opinion of Oct.* 18, 1791, 1 Op. 19.

2. Under the fourteenth section of the act of April 10, 1816, chap. 44, incorporating the Bank of the United States, the Treasury must receive its bills in payment of debts due to the United States. *Opinion of April* 15, 1819, 1 Op. 268.

3. A resignation of a director of the Bank of the United States is an inchoate act until the same has been accepted expressly, or presumptively by the appointment of another. *Opinion of Feb.* 2, 1831, 2 Op. 406.

4. The Secretary of War had authority to direct the president of the Bank of the United States to transfer the funds, books, and papers of the pension agency in possession of said bank to the president of the Girard Bank, and no valid reason has been assigned for disobeying the order. *Opinion of Feb.* 3, 1834, 2 Op. 594.

5. The Bank of the United States and its branches performed only the subordinate duties of paymasters of pensions, and sustain the same relation to the Secretary of War which the ordinary paymasters of the Army sustain to the same Department. They cannot look beyond the orders of the Department in order to question their validity, nor inquire into the manner in which its chief intends to dispose of the

funds, &c., demanded of them. The order itself, in this case, is an ample voucher and indemnity to the agents complying with it. This case is distinguishable from cases of payments in detail to those who claim to be the creditors of the Government. *Ibid.*

6. The directors of the Bank of the United States are not justifiable in withholding dividends on the stock of that institution owned by Government, and to apply the same in satisfaction of a controverted claim against the latter for damages, costs, and interest upon a bill drawn on the Government of France. *Opinion of Nov.* 28, 1834, 2 Op. 663.

UNITED STATES COMMISSIONER.

The district court of the United States for the western district of Virginia had power, under the act of February 4, 1819, chap. 12, to appoint commissioners. *Opinion of Feb.* 11, 1859, 9 Op. 263.

VESSEL.

See also COMMERCE AND NAVIGATION; SHIPPING.

1. Where a vessel, foreign-built, was wrecked in the United States and afterwards purchased and repaired by a citizen of the United States: *Held*, that the expense of getting such vessel afloat, and in a proper position for being repaired, should be taken into account in deciding whether the repairs put upon such vessel shall be equal to three-fourths of the cost of said vessel when repaired. *Opinion of Feb.* 14, 1853, 5 Op. 674.

2. By the fourth section of the act of 30th August, 1852, chap. 106, vessels which are required to have two, three, four, or six lifeboats, must have one of metal, fire-proof. *Opinion of Feb.* 14, 1853, 5 Op. 676.

3. By the ninth section of said act, public vessels of the United States, or vessels of other countries; steamers used as ferry-boats tugboats, and towing boats; and steamers not exceeding one hundred and fifty tons burden, which are used in whole or in part for navigating canals, are exempted from inspection. *Ibid.*

4. Masters of American vessels cannot lawfully discharge seamen in foreign ports without intervention of the consul. *Opinion of July* 17, 1855, 7 Op. 349.

5. It does not help the matter to allege that the seamen consent, or have misconducted themselves, or are not Americans; of all that it is for the consul to judge. *Ibid.*

6. Masters of American vessels are subject to prosecution in the name of the consul for omission to deposit with him the papers according to law, but not to indictment. *Opinion of Aug.* 22, 1855, 7 Op. 395.

7. The act of March 3, 1855, chap. 213, regulating the carriage of passengers in steamships and other vessels, and imposing penalties and punishment for contravention, is made applicable to ships abroad in sixty days in Europe, and six months in other parts of the world, and requires notice of the act to be given in all foreign ports through the Department of State: *Held*, that where such notice had failed to be given in such foreign port, and the owner or master of a vessel had thus unconsciously offended, it was a proper case for remission of forfeiture and for pardon of the master. *Opinion of Sept.* 11, 1855, 7 Op. 489.

8. Shipmasters in foreign ports are subject, on the requisition of the consul, to take on board and convey to the United States distressed mariners; but not seamen or other persons accused of crimes, and to be transported to the United States for prosecution. *Opinion of June* 25, 1856, 7 Op. 722.

9. Officers and crews of the public ships of the United States are not entitled to salvage, civil or military, as of complete legal right. *Opinion of July* 8, 1856, 7 Op. 756.

10. The allowance of salvage, civil or military, in such cases, like the allowance of prize money on captures, is against public policy, and ought to be abolished in the sea service, as it was long ago in the land service. *Ibid.*

VIRGINIA BOUNTY LAND-WARRANTS.

See also PUBLIC LANDS, VI.

1. The United States have by the act of August 31, 1852, chap. 114, assumed all unsatisfied outstanding military land-warrants of

the State of Virginia, issued by the proper authorities thereof, for Revolutionary services of its officers, soldiers, seamen, and marines, such warrants having been fairly and justly issued in pursuance of the laws of the State. *Opinion of Jan.* 7, 1854, 6 Op. 243.

2. Persons, called in the laws of Virginia "supernumerary officers," and in the resolves of Congress "deranged officers," are to be treated as in service, and warrants, issued to them by the State for additional land on account of such services, are entitled to be exchanged for land scrip of the United States. *Ibid.*

3. By the laws of the State of Virginia, the legal representatives, the heirs or devisees of any one of her officers or privates, who fell or died in the service during the Revolutionary war, are entitled to the same quantity of bounty land as would have been due to him had he continued to live and to serve to the end of the war, and warrants therefor lawfully issued are to be satisfied by scrip of the United States. *Opinion of Jan.* 9, 1854, 6 Op. 258.

4. A decision regularly made by the governor and council of Virginia on a claim for military bounty lands under her laws is in its nature as conclusive as if the same jurisdiction had been conferred upon and exercised by a judicial tribunal. *Opinion of May* 30, 1858, 9 Op. 156.

5. A claimant of scrip for Revolutionary services in the Virginia line, under the act of August 31, 1852, chap. 114, must produce a warrant from the proper authorities of that State. *Ibid.*

6. The provision in the act of 1852, which requires the Secretary of the Interior, in granting scrip, to be satisfied that each warrant was "fairly and justly issued according to the laws of Virginia," simply requires an examination as to the fairness and justness which gave character to the act of issuing the warrant, and does not authorize or require the Secretary to try over again the questions of fact and law settled by the governor and council. *Ibid.*

7. Under the act of August 31, 1852, chap. 114, the Secretary of the Interior has no power to issue scrip on a military land-warrant not issued or allowed by the State of Virginia prior to the 1st of March, 1852. *Opinion of June* 28, 1859, 9 Op. 352.

8. A warrant issued under the authority of the governor of Virginia after the time limited by the statute of the State passed March 16, 1850, was not "justly" issued according to the laws of Virginia. *Ibid.*

9. In order to entitle the holder of a warrant issued by the State of Virginia to scrip under the act of August 31, 1852, chap. 114, it is not necessary that he should prove to the satisfaction of the Secretary of the Interior that the military services for which it was issued were in fact rendered. *Opinion of June* 28, 1859, 9 Op. 354.

10. The discovery of evidence after the date of the warrant that military services were not rendered, would not authorize the Secretary to reverse the action of the State authorities, but on proof of perjury and fraud in the obtaining of the warrant, the case should be returned for the action of the State authorities. *Ibid.*

VIRGINIA MILITARY BOUNTY LANDS.

See VIRGINIA BOUNTY LAND-WARRANTS.

WAR DEPARTMENT.

See also EXECUTIVE DEPARTMENTS; SECRETARY OF WAR.

1. The nature and extent of the relations sustained by the National Government to the State militia, before they are called into the actual service of the United States, are not such as to render proper the establishment of a separate bureau in the War Department to supervise and control them, if the President were competent to establish such a bureau without authority of an act of Congress. *Opinion of April* 18, 1861, 11 Op. 11.

2. The President has no power to establish such a bureau in the War Department without an act of Congress authorizing it. *Ibid.*

3. An explicit appropriation would be needed to provide compensation for any extra duty performed by an officer of the Army as chief of such a bureau. *Ibid.*

4. An officer of a mounted corps could not be the chief of such a bureau under existing regulations of the Army. *Ibid.*

WASHINGTON AQUEDUCT.

1. On March 3, 1857, by effect of the joint resolution of that date, the contract for manufacturing brick for the Washington aqueduct was rescinded with the full consent of all parties concerned, and the Government was thereby released from obligation to pay for any bricks which the parties could have made after that date. *Opinion of Sept.* 20, 1860, 9 Op. 480.

2. The appropriation of $500,000 made by the act of June 25, 1860, chap. 211, for the completion of the Washington aqueduct is applicable to the payment of debts and liabilities created in the prosecution of that work previous to and existing at the date of the appropriation. *Opinion of Sept.* 10, 1860, 9 Op. 493.

3. The superintendent of the Washington aqueduct is not authorized to withhold a payment which the Secretary of War or the engineer-in-chief has ordered him to make, though he himself may differ with his superior officers in regard to the justice of the debt. *Ibid.*

4. The Secretary of War has no authority to review and change the decision of the superintendent, made while he was chief engineer of the aqueduct, on a question arising under a contract containing a stipulation which expressly binds both contractor and the United States to abide by the decision of the chief engineer as final and conclusive upon all questions arising out of, or connected with, the contract. *Ibid.*

WASHINGTON CITY.

See also DISTRICT OF COLUMBIA.

1. So long as the law of Maryland, and the order of the commissioners under it, remain unrepealed, the wharves proposed to be built by the owners of water-lots on the Potomac and Eastern Branch must follow the direction of the present streets of the city, and cannot be projected at right angles from Water street to the channel. *Opinion of July* 8, 1818, 1 Op. 223.

2. Commissioners of public buildings have no power to make an order allowing the proprietors to erect buildings beyond the line of Water street. *Ibid.*

3. It is the duty of the President to exercise a general supervision over the subject of the appropriation of the public grounds in the city of Washington; and as the right to occupy and improve any of these grounds depends upon whether the improvements are for public purposes, so the power of the President to assent to improvements depends upon whether they are for public purposes and are useful. *Opinion of May* 29, 1820, 1 Op. 369.

4. The resolution of the corporation of Washington city, proposing to improve a part of Judiciary Square, by erecting thereon a city hall, is to appropriate the public grounds for both a *public* and a *useful* purpose, and may be approved by the President; provided, that the quantity of ground required neither exceeds nor falls short of the purpose. *Ibid.*

5. The assent of the President to acts of the corporation of Washington should be expressed in the same manner as his assent is expressed to acts of Congress. *Ibid.*

6. The act of July 16, 1790, chap. 28, for establishing the seat of government of the United States, authorized commissioners, who were to be appointed by the President, to purchase or accept such quantity of land on the eastern side of the Potomac, within the District of Columbia, as the President should deem proper for the use of the United States; and by a liberal construction of that provision, only, has it been claimed that the President had power to establish a plan of the city; but the deeds of the original proprietors require the trustees appointed by them to convey to the commissioners such streets, squares, parcels, and lots as the President should deem proper. In pursuance of the power thus conferred, President Washington, in 1797, executed an instrument of writing, in which he directed the trustees to convey to the commissioners all the streets delineated in a plan intended to be, but not, annexed. President Washington having previously ratified Ellicott's engraved plan of the city, it must now be presumed that Ellicott's plan was what he intended to annex; and that, as it indicated streets through the mall, it was originally intended that streets might be opened through it. *Opinion of Dec.* 16, 1820, 1 Op. 416.

7. Although President Adams subsequently gave his sanction to another plan, said by the commissioners to have been annexed, which did not indicate streets through the mall, the pro-

mulgation, publication, and exhibition of Ellicott's plan, on the day of sale of lots, amount to a pledge of the public faith that the streets thus indicated should be opened. *Ibid.*

8. No authority has been given to the President to cause public lots in Washington to be filled up, or stagnant water thereon to be removed. *Opinion of May* 31, 1823, 1 Op. 615.

9. The corporation of the city of Washington has power to establish a board of health, to make regulations for the preservation of health, to open all necessary drains, and to do every act which the health of the city may require, and to lay taxes, &c., for the purpose of defraying the expenses. *Ibid.*

10. The act of May 7, 1822, chap. 96, specially authorized the draining and filling up of the low grounds near Tiber Creek and the canal, and appropriated funds for that purpose. *Ibid.*

11. The mayor and commissioners of the city of Washington were authorized to convey to the United States "one room for the court, and six rooms for the marshal, clerk, and jurors, and the books, papers, and records of the court;" but, in addition, they convey "the use of so much of the basement story of said hall, under the said court-room, as shall be necessary for the safe and convenient keeping of fuel," &c.: *Held*, that the latter clause was void. *Ibid.*

12. Although the corporation of Washington have the power by their charter, with the approbation of the President of the United States, to draw lotteries, the amount to be thus raised cannot exceed $10,000 in any one year. *Opinion of May* 18, 1825, 1 Op. 721.

13. If the corporation has not improved this provision during any former years, the right to do so for those years has gone; for the President during those years only had the right to judge of the expediency of a lottery or lotteries by the circumstances then existing. *Ibid.*

14. The power is a limited one and must be exercised as specified in the charter. *Ibid.*

15. The Chesapeake and Ohio Canal Company may commence the eastern section of the canal at any point on the tide-water of the Potomac within the District of Columbia which hey may select. The route of the canal through the city of Washington from that point, and the time within which the work shall be finished, rest entirely in the discretion of the company. *Opinion of Aug.* 6, 1828, 2 Op. 166.

16. A surveyor of Washington who is appointed by the Commissioner of Public Buildings, with the understanding that no salary is to be claimed, cannot receive any pay out of he fund appropriated for the District. *Opinion of Dec.* 1, 1831, 2 Op. 471.

17. But the President is advised to make an unconditional appointment of surveyor, leaving the necessity of the office to Congress, which will apply the remedy, if it be unnecessary, and the salary be too great. *Ibid.*

18. The power to grade the streets in the city of Washington is in the corporation, not in the Commissioner of Public Buildings, and can be exercised only under its authority. *Opinion of Oct.* 31, 1832, 2 Op. 541.

19. Congress by the acts of March 2, 1831, chap. 85, and March 3, 1835, chap. 28, has not granted to the Baltimore and Ohio Railroad Company the right to pass through the public reservations in the city of Washington, the same not being included in the "other squares and lots" in the city. *Opinion of June* 15, 1835, 2 Op. 715.

20. The Secretary of the Treasury may give to the corporation of Washington the certificate described in the seventh section of the act of May 31, 1832, chap. 113, vesting in that corporation the rights of the Washington Canal Company, notwithstanding the work was not completed by the 1st of March, 1833; provided the work has been finished in the manner prescribed, and the time when it was actually completed be stated. *Opinion of Nov.* 7, 1837, 3 Op. 290.

21. Repairs in front of leased tenements in the city of Washington are, by the corporation act of 1st August, 1831, required to be made by the owners, who are, in general, the lessors; and where the leases are silent upon the subject of such repairs, the law regulating repairs in the District may properly be considered and taken as a part of the contract. *Opinion of Feb.* 13, 1840, 3 Op. 496.

22. The act of May 15, 1820, chap. 104, pledged the proceeds of sales of public lots in the city of Washington to the payment of certain expenses to be incurred by the corporation in making certain improvements; wherefore, the funds in the treasury derived from that

source should be applied to reimburse certain advances made by the corporation, notwithstanding the act of 17th May, 1848, chap 42. *Opinion of Sept.* 6, 1849, 5 Op. 151.

23. The commissioners appointed under the act of 16th July, 1790, chap. 28, to purchase or accept a site for the seat of Government of the United States, had no power to convey any lands in the city of Washington which had been appropriated as a public reservation for the use of the United States: *Held*, therefore, that the conveyance of such commissioners, made on the 25th May, 1798, of a part of the President's square to the minister of Portugal, in behalf of his Government, was void, though approved by the President. *Opinion of Nov.* 24, 1851, 5 Op. 465.

24. The non-user of the land so granted, by any minister of Portugal, for fifty years and more next after the date of the deed, supports the inference that the want of authority to make the grant was known to and acquiesced in by the grantee. *Ibid.*

25. The original reservation in the plat of the city of Washington for the President's mansion extended south to the bank of the stream called Goose Creek. *Opinion of May* 4, 1854, 6 Op. 444.

26. There is no public street lawfully existing across that reservation south of the President's mansion. *Ibid.*

27. At the foundation of the Government's title to city lots in the city of Washington are trust deeds from the original proprietors of the land to Thomas Beall and John M. Gantt, who thus held the fee in trust for the original proprietors and for the United States. *Opinion of Aug.* 1, 1855, 7 Op. 355.

28. By force of a legislative act of the State of Maryland of 1791, the fee of these lots became vested in the several *cestui que trusts*, whether the original grantors, the United States, or purchasers under either. *Ibid.*

29. By force of the same act of the State of Maryland, as construed by subsequent acts of Congress, the power to convey the Government lots became vested in different statute officers of the United States, namely, first, a board of commissioners, then a superintendent, and, finally, the Commissioner of Public Buildings. *Ibid.*

30. All conveyances heretofore made by the board of commissioners, the superintendent, or the Commissioner, suffice to pass the title, provided the conveyances were otherwise valid, and the sales were made by the direction of, and in the time and manner prescribed by, the President of the United States. *Ibid.*

31. The same power is held by the present Commissioner. *Ibid.*

32. By the charter of Washington the councils have power to regulate the manner of erecting, and the character of the materials to be used in the erection of houses. But no such regulation can be made without the approbation of the President of the United States. *Opinion of June* 11, 1857, 9 Op. 51.

33. There is no provision of law which expressly, or by implication, gives the Secretary of the Interior or the Commissioner of Public Buildings any authority to consent to the laying of a railway along the streets or avenues of the city of Washington. *Opinion of April* 2, 1862, 10 Op. 220.

34. The extent of the power of the Commissioner of Public Buildings and, intermediately, of the Secretary of the Interior, over the streets and avenues of the city of Washington, considered. *Ibid.*

WASHINGTON MONUMENT.

1. Provisions of the act of August 2, 1876, chap. 250, entitled "An act providing for the completion of the Washington Monument," examined and explained. *Opinion of Aug.* 12, 1876, 15 Op. 149.

2. The act contemplates that the joint commission, by the use of the sum appropriated and such money and materials as may be collected by the Washington National Monument Society, shall continue the construction of the monument and carry it forward towards completion, not that it shall be completed within the sum appropriated; and, furthermore, that the plan adopted and partly executed by the society shall be followed by the commission. The entire direction and supervision of the work are intrusted to the joint commission. *Ibid.*

WEST POINT.

See also MILITARY ACADEMY.

1. The privilege conferred by the act of December 14, 1867, chap. 1, upon the Hudson River West Shore Railroad Company "to lo-

cate, construct, and operate its railroad on the shore line across the property belonging to the Government at West Point, in the State of New York," &c., became a franchise of that corporation assignable to any other company succeeding to its rights and franchises. Hence the North River Railway Company, having succeeded by transfer to the franchises, &c., of the first-named company, is entitled to the privilege mentioned. *Opinion of June* 17, 1880, 16 Op. 520.

2. The Secretary of War cannot "materially" alter the location fixed by his predecessor in office and accepted by the railroad company. *Ibid.*

3. The regulations adopted and approved by the Secretary of War under the act of 1867, aforesaid, contemplated that changes therein might be made as future contingencies should require. The proposed series of regulations of June, 1880, may be adopted if it is deemed needful to do so, having due regard to the interests of the company. *Ibid.*

4. The Secretary of War may properly require the removal and rebuilding of the observatory, made necessary by the location of the railroad, to be done at the expense of the railroad company, as a condition of the use of such location; and, to assure the performance of that work by the company, he can accept security therefrom in the form of a deposit of a sufficient sum of money with a United States depositary, to be returned on completion of the work. *Ibid.*

5. The privilege granted by the said act of 1867 cannot be deemed forfeited by lapse of time, in the absence of a judicial proceeding declaring the forfeiture. *Ibid.*

WILL.

See also EXECUTORS AND ADMINISTRATORS.

1. The validity of a will to pass personal estate in this country depends on the law of the place in which it was made. *Opinion of July* 3, 1820, 1 Op. 382.

2. By the civil law an executor, *eo nomine*, is not essential to the validity of a will; the institution of an universal heir, who stands in the place of an English executor and residuary legatee, being sufficient. *Ibid.*

3. It is the settled practice to admit the authority of letters testamentary, regularly issued by courts of probate in the several States, in adjusting demands upon the Government. *Opinion of Dec.* 2, 1823, 1 Op. 634.

4. A legatee under a will made in France cannot maintain a suit in equity in the courts of the United States without probate first had of the will in the proper courts of this country. *Opinion of Oct.* 16, 1828, 2 Op. 168.

5. Where a person entitled to bounty land died before he received it, leaving two heirs-at-law and a will devising certain other of his real and personal estate to one, to be in full for all interest in his estate: *Held*, that the other takes the bounty land by implication. *Opinion of Oct.* 25, 1832, 2 Op. 535.

6. The right of Indian reservees under the treaty of 1826 with the Miamies to devise land by will is doubtful, being liable to greater objections than an ordinary transfer by deed. *Opinion of March* 29, 1834, 2 Op. 631.

7. Soldiers entitled to bounty lands under the act of February 11, 1847, chap. 8, but who have not received warrants therefor, cannot dispose of their rights to such land or scrip by will. *Opinion of June* 28, 1850, 5 Op. 237.

8. A testament having been admitted as well disposing of personal estate, a codicil to the same, and having the same legal qualities, is also entitled to probate. *Opinion of Oct.* 9, 1855, 8 Op. 466.

WISCONSIN.

By compact between the United States and the State of Wisconsin, when the latter was admitted into the Union, it was agreed that the United States would pay to the State 5 per cent. of the net proceeds of the sale of public lands within the same for the use of its schools, provided that certain liabilities of the Territory of Wisconsin, on account of lands granted by the United States for canals therein, shall be paid and discharged by the State: *Held*, that the United States cannot make a set-off of the 5 per cent. school fund to pay the canal debt, because the former is a special trust fund; but that the United States may retain the money in trust itself until the State discharges its obligation in the other respect to the United States. *Opinion of Sept.* 18, 1854, 6 Op. 732

WITNESS.

1. Witnesses imprisoned on account of their inability to give security for their appearance at court are not entitled to any compensation beyond the one dollar and twenty-five cents a day, *for attending court*, and five cents a mile for traveling expenses, allowed in act of February 28, 1799, chap. 19. *Opinion of March* 31, 1820, 1 Op. 344.

2. That act provides only for witnesses "summoned in court, attending in court;" and unless it be in session there is no court in which, or upon which, they can attend. Witnesses detained, in order that they may be in attendance when the time for a session of court shall arrive, cannot be considered in attendance in or upon the court. They earn their compensation only by attending where they shall be in the power of the court whensoever it shall be necessary to call for their testimony. *Opinion of Dec.* —, 1820, 1 Op. 425.

3. In a public prosecution the law regards the time of a witness as not lost to himself, but bestowed upon the interests of the community of which he is a member, and therefore he may be considered as being, in some degree, employed for himself. If paid by the marshal all the compensation which Congress has seen fit to make, he cannot obtain anything more. Payment for detention for want of bail has not been provided; and, until it shall be, no marshal can legally make any allowance therefor; nor can any allowance therefor be passed by the officer who shall settle his official accounts. *Ibid.*

4. The "reasonable contingent expenses" that may accrue in holding courts, which marshals are allowed to pay, are only those that arise in holding the court; not on account of the criminal jurisdiction of the court, or the necessity of the attendance thereon of particular witnesses, but of the "holding court" according to appointment at the specified time and place. *Ibid.*

5. The President has no authority to allow extra witness fees to a person who appeared as witness for the claimant in the reclamation of a fugitive from service, examined before a United States commissioner in the State of Massachusetts. *Opinion of March* 10, 1854, 6 Op. 356.

6. Claim of Perry E. Brocchus for return transportation from Santa Fé, for attending as a witness upon a general court-martial, considered. *Opinion of Sept.* 11, 1858, 9 Op. 186.

7. The board of commissioners constituted by the act of April 17, 1866, chap. 46, to ascertain the amount of money expended by Missouri in equipping troops, have no power to issue compulsory process for the attendance of witnesses. *Opinion of Aug.* 16, 1866, 12 Op. 15.

8. Expenses necessarily incurred by an officer of the Army as a witness for the Government in judicial proceedings before the civil authorities are allowable under section 850 Rev. Stat., and payable from the judiciary fund. *Opinion of April* 15, 1878, 15 Op. 486.

9. The prohibition in that section against the allowance of mileage applies as well to military as to civil officers who may be sent away on such service. *Ibid.*

10. Army officers and soldiers, where they are sent away to attend as witnesses for the Government in any of the United States courts, are entitled, under section 850 Rev. Stat., to receive their *necessary expenses* in going, returning, and attendance on the court, which must be stated in items and sworn to. They are not, in such case, entitled to *mileage* or *witness fees*. *Opinion of Aug.* 2, 1878, 16 Op. 113.

11. The necessary expenses incurred by soldiers as witnesses for the Government, allowable under section 850 Rev. Stat., may be paid by marshals upon proper proof thereof. *Opinion of Sept.* 27, 1878, 16 Op. 147.

WRECK.

The commissioners of wrecks, appointed under the laws of the State of North Carolina, are "parties legally authorized to receive" property saved from shipwreck on the coast of that State, within the meaning of the proviso to section 4 of the act of June 18, 1878, chap. 265. It is accordingly the duty of keepers of life-saving stations within the limits of that State, under the provisions of that section, to deliver such property to the said commissioners whenever it is claimed by them. *Opinion of Oct.* 18, 1879, 16 Op. 645.

WRITS OF ERROR AND APPEALS.

1. An appeal lies to the Supreme Court from the decree of a district judge, deciding that he has no jurisdiction over a particular subject. *Opinion of May* 9, 1795, 1 Op. 56.

2. The appeal of Girard from the decree of the circuit court, affirming the condemnation of the "Good Friends" for an infraction of the laws of the United States during the late war with Great Britain, is not so general as to draw the forfeiture in question before the Supreme Court; but it works no forfeiture of the benefit of a remission. *Opinion of Jan.* 15, 1819, 5 Op. 714.

3. Appeals and writs of error to the Supreme Court of the United States are founded only upon errors in points of law properly raised in the courts below for decision. *Opinion of April* 12, 1823, 1 Op. 614.

4. Where no questions of law have been made on the trial of a cause, and the whole matter has been submitted to a jury, the only redress that can be obtained is by a new trial. *Opinion of June* 6, 1826, 2 Op. 35.

5. The grant or refusal of a new trial, being purely within the discretion of the court which tried the cause, is not the subject for revision in the Supreme Court. *Ibid.*

6. An appeal from a decree of the United States court for the district of Louisiana, under the acts of May 26,1824, chap. 173, and June 17, 1844, chap. 95, for the adjustment of private land claims in Louisiana, must be prosecuted within a year from the time the decree was rendered; therefore, where a decree, confirming to C. and G. certain lands, was made, and an appeal was prayed, but not prosecuted within a year, as required, the decree has become final, and the parties are entitled to a patent for their land. *Opinion of Nov.* 25, 1851, 5 Op. 475.

7. Where a case decided against the United States in the district court is not appealed according to law the decision of the district court is final in law. *Opinion of July* 26, 1854, 6 Op. 634.

8. The question of the expediency of continuing or dismissing an appeal in the Supreme Court on a suit involving alleged trespass upon or title of the public lands belongs to the competency of the Secretary of the Interior, not of the Attorney-General. *Opinion of Oct.* 15, 1855, 7 Op. 550.

9. Suits brought in a circuit court by a collector to recover hospital money are not of the class of revenue or duty cases excepted from the minimum limitation of the judiciary act; but such suits may be carried up to the Supreme Court by certificate of division between the judges. *Opinion of Dec.* 15, 1856, 8 Op. 238.

10. On a question submitted by the Secretary of the Treasury as to the advisability of suing out writs of error in certain cases recently determined in the circuit court for the southern district of New York, known as the "charges and commission" cases: *Advised*, that for considerations stated, both of a general and special character, it is inexpedient to bring writs of error in the cases referred to. *Opinion of June* 25, 1874, 14 Op. 661.

11. Upon examination of the record in the case of the steamer Nuestra Signora de Regla: *Advised*, that such a state of facts is presented as renders it proper that there should be an appeal to the Supreme Court of the United States. *Opinion of May* 19, 1879, 16 Op. 339.